

Information Seminar for Suppliers on the Ontario Broader Public Sector Procurement Directive

April 29, 2011

Agenda



8:30 – 10:15

- Overview: Broader Public Sector Accountability Act and Procurement Directive
 - Compliance for hospitals
 - Review of the 25 mandatory requirements
 - Tools for hospitals: Procurement Directive Toolkit contents and framework
- Procurement processes
- Contract management

10:15 – 10:45 Coffee and Networking Break

10:45 – 12:00

- Evaluations and Other Burning Questions
 - Evaluation Process
 - Vendor Debriefing
 - Bid Dispute Resolution
 - Value Add Incentives

Broader Public Sector Accountability Act (2010)
and the Procurement Directive

Current Environment

- Fiscal pressures are affecting both the government and broader public sector organizations
- There is increased scrutiny regarding how public funds are spent
- The *Broader Public Sector Accountability Act, 2010* brings in new rules and consistent accountability standards for the broader public sector, including:
 - Ban on using public funds to pay for consultant lobbyists;
 - **New directives setting out rules for procurement** and expenses;
 - Requirements specific to hospitals and Local Health Integrations Networks (LHINs), for example, reporting and publicly posting expense information; and
 - Bringing hospitals under freedom of information legislation.

BPS Procurement Directive – Context



The broader public sector (BPS) Procurement Directive (Directive) replaces the BPS Supply Chain Guideline issued by the Ministry of Finance in 2009.

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 lifecycle 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, in the right place.
Process Standardization	Standardized processes remove inefficiencies and create a level playing field.

BPS Procurement Directive – Requirements



- The BPS Procurement Directive has been developed based on the BPS Supply Chain Guideline and substantially aligns with Provincial Trade Agreements and the Management Board of Cabinet Procurement Directive
- The Procurement Directive has the following requirements:
 - A Supply Chain Code of Ethics
 - Procurement Policies and Procedures
- The Broader Public Sector (BPS) Procurement Directive will:
 - provide consistent procurement practices for BPS organizations
 - ensure that publicly funded goods and services are acquired by BPS organizations through a process that is open, fair and transparent
 - ensure accountability through each stage of the procurement process
 - maximize the value that BPS organizations receive from the use of public funds

Mandatory Requirements

- The BPS Procurement Directive strengthens the Supply Chain Guideline by introducing mandatory requirements related to:
 - competitive acquisition of consulting services regardless of dollar value
 - the approval authority framework related to consulting services
 - effective management of BPS contracts

- Hospital Presidents/CEO's and the Board of Directors are required to prepare attestations with respect to compliance with the requirements of the Broader Public Sector Accountability Act, including:
 - the completion and accuracy of reports on the use of consultants
 - compliance with procurement directives issued by the government

Competitive Procurement Thresholds



Goods, Non-Consulting Services and Construction	
Total Procurement Value	Means of Procurement
\$100,000 or more	Open competitive process
Consulting Services	
Total Procurement Value	Means of Procurement
\$0 up to but not including \$100,000	Invitational or open competitive process
\$100,000 or more	Open competitive process

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

Procurement Approval Authority Schedule (AAS) for Consulting Services		
Procurement Method	Procurement Value	Approval Authority
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*	\$0 up to but not including \$1,000,000	President, CEO or equivalent
	\$1,000,000 or more	Board of Directors or equivalent

*Exemption-based only

Purchasing Policies and Procedures: 25 Mandatory Requirements



Approval Authority Levels

1. Segregation of Duties
2. Approval Authority

Procurement Thresholds

3. Competitive Procurement Thresholds

Competitive Procurement

4. Information Gathering
5. **Supplier Pre-Qualification**

Purchasing

6. **Posting Competitive Procurement Documents**
7. Timeline for Posting Competitive Procurements

Evaluation

8. Bid Receipt
9. **Evaluation Criteria**
10. **Evaluation Process Disclosure**
11. Evaluation Team
12. Evaluation Matrix

13. Winning Bid

14. Non Discrimination

Contract Award

15. Executing the Contract
16. Establishing the Contract
17. Termination Clauses
18. Term of Agreement Modifications
19. Contract Award Notification

20. Vendor Debriefing

Non-Competitive Procurement

21. Non-Competitive Procurement Documents and Records Retention

22. Contract Management

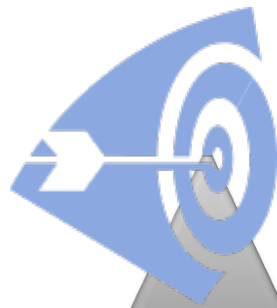
23. Procurement Records Retention

Conflict of Interest

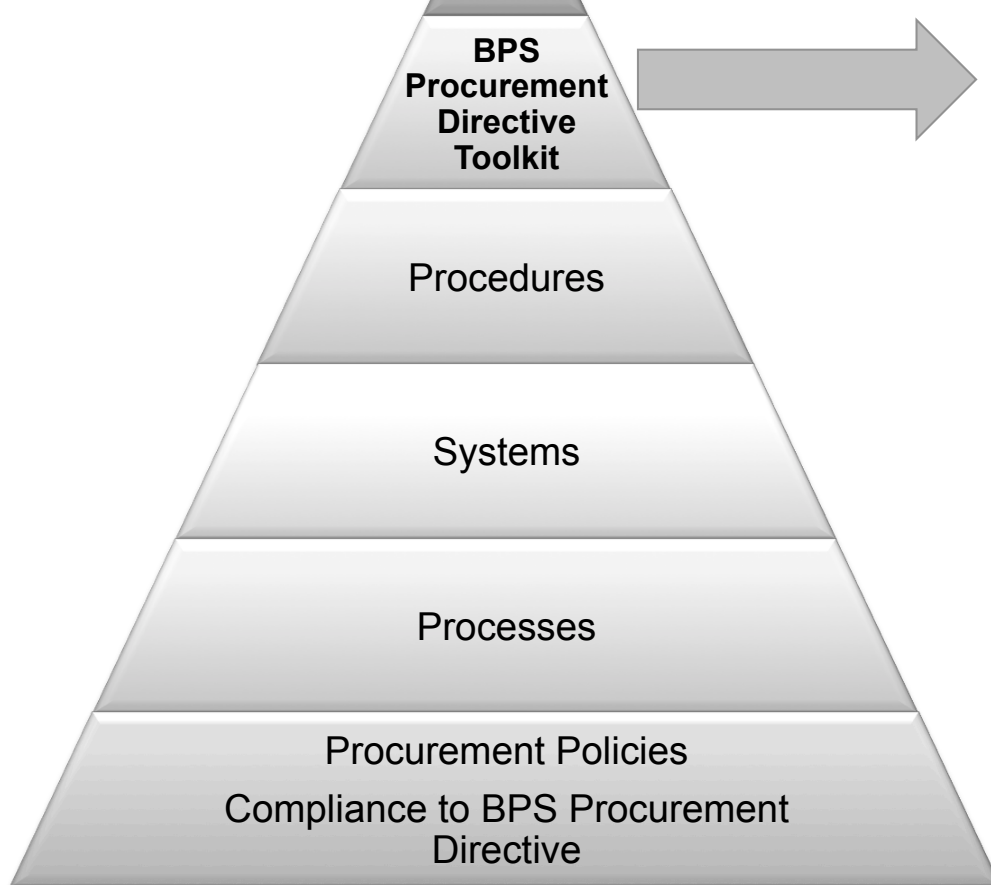
24. Conflict of Interest

Dispute Resolution Process

25. Bid Dispute Resolution



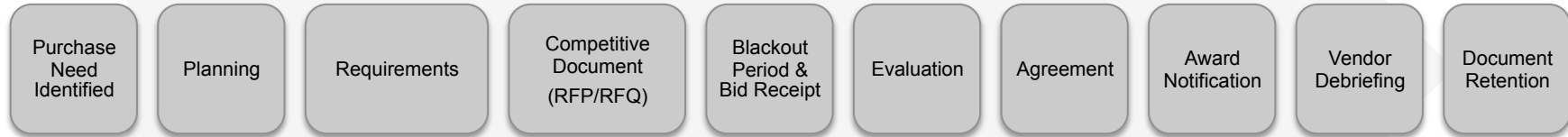
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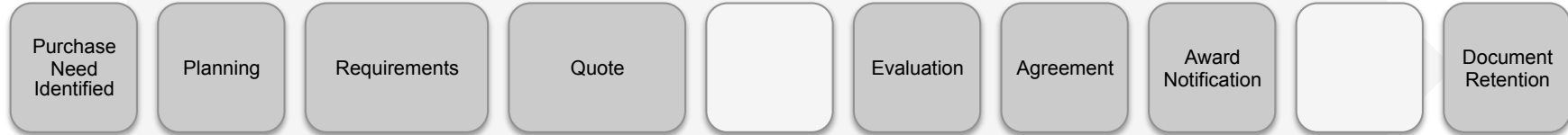
BPS Procurement Directive Toolkit

- Workflows
- Process Checklists
- Process Maps
- Templates
- Guidelines
- Detailed Checklists
- Options

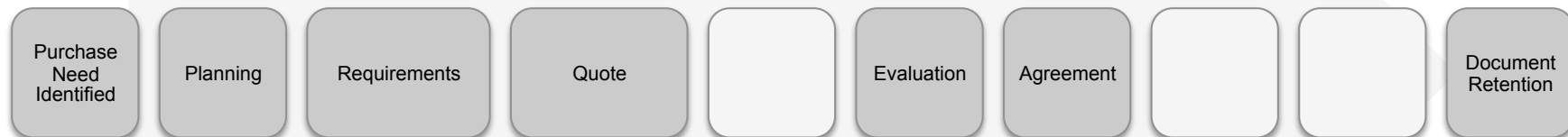
Core Procurement Workflows



Competitive Workflow (Open Competitive and Invitational Competitive)



Non-Competitive Workflow



Informal Workflow

Open Competitive Procurement Competitive Document - continued



Process Checklist

- Determine and Specify:
 - Conditions that must be met before obtaining procurement documents (conflict-of-interest declaration, non-disclosure agreement)
 - Bid response time (as appropriate to complexity and purchase value; **minimum is 15 calendar days**)
 - Date responses need to be received (**must be a normal working day, so Monday to Friday, excluding holidays**)
 - Name, contact information and location of contact person, i.e., Bid Administrator (add a statement that suppliers who bypass this contact person may be disqualified)
 - Submission rules, bid receipt information (for example, pricing information in a separate envelop) and process for bid opening
 - Expense claims and reimbursement rules (comply as per Broader Public Sector Expenses Directive)*
 - Contract terms & conditions, contract base term & extension, date when contract extension needs to be invoked**
 - Conditions that must be met (mandatory requirements and technical standards; include statement: submissions that do not meet the mandatory criteria will be disqualified)**
 - Clinical and/or technical requirements**
 - Evaluation criteria and process:**
 - mandatory & technical standards**
 - price/cost**
 - resolving a tie score**
 - rated requirements**
 - minimum required rating**
 - role of sub teams**
 - shortlist process**
 - role and rating of Supplementary Evaluation**
 - value-add incentives**
 - alternative strategies or solutions**
 - Bid dispute resolution process and procedure**
- Process for vendor debriefings and notify of entitlement to a vendor debriefing once competitive process completed**
- Include a draft copy of the Form of Agreement (e.g., contract) to be signed in the event of an award of the procurement
- Add statement that the procurement is subject to Ontario's trade agreements (goods, services & construction >=\$100,000)
- Consider form of agreement with a ceiling on the contract value (for service agreements)*
- Consider contract clauses that permit cancellation or termination at critical project life-cycle stages*
- Consider statement for cancellation of competition if received bids exceed allocated budget, do not meet requirements or do not represent fair market value*
- Request for a list of any subcontractors that will be used
- State the period of irrevocability of bids where bids cannot be withdrawn (typically 120 days from bid closure date)
- Add notice that any confidential information supplied to the organization may be disclosed by the organization where it is obliged to do so under FIPPA, by an order of a court or tribunal or otherwise required at law
- Receive approval for competitive document
- Post competitive document on public electronic tendering system**

Procurement Processes

Competitive Procurement Processes Goods and **Non-Consulting Services**



< \$xx

- Informal Procurement (one quote)
- Invitational Competitive Procurement
- Open Competitive Procurement

>= \$XX and
< \$100,000

- Invitational Competitive Procurement (3 written proposals)
- Open Competitive Procurement

>=
\$100,000

- Open Competitive Procurement

It is a mandatory requirement that open competitive procurement be conducted for purchase value >= \$100,000.

The processes are the same for any competitive procurement, whether invitational or open:

Invitational Competitive (minimum 3 written proposals)

- Every effort must be made to obtain a minimum of 3 written proposals
 - In certain circumstances this may not be possible, and written documentation of the reason must be included in the file
- No open posting requirements

Open Competitive (>\$100,000)

- Posting requirements
 - Documents must be posted on an electronic tendering system
 - Documents must be posted for a minimum of 15 days

Invitational and Open Competitive Processes



The RFP must include:

- Contract terms & conditions, contract base term & extension, date when contract extension needs to be invoked
- Conditions that must be met, including mandatory requirements and technical standards
 - Submissions not meeting mandatory criteria will be disqualified
- Full disclosure of the evaluation criteria, process and methodology to be used in assessing submissions
- Identification of the bid administrator (Single Point of Contact)
 - Suppliers who go outside of this contact person may be disqualified
- A draft copy of the contract to be signed in the event of an award of the procurement
 - Upon supplier selection, a written contract and purchase order or LOA are issued
 - There must be a signed agreement before goods/services can be delivered
 - In certain circumstances, an organization may use an alternative method to Contract A/Contract B. This is to be used on an exception basis only.

Invitational and Open Competitive Processes



- Submission rules and bid receipt information
 - Bids received after the closing date and time must be returned unopened
- Date responses need to be received (must be a normal working day)
- Expense claims and reimbursement rules
 - per Broader Public Sector Expenses Directive
- Bid dispute resolution process and procedure
- Notification of entitlement to a vendor debriefing once competitive process completed and the process to be followed
- Request for a list of any subcontractors that will be used
- The period of irrevocability of bids where bids cannot be withdrawn (typically 120 days from bid closure date)
- A notice that any confidential information supplied to the organization may be disclosed by the organization where it is obliged to do so under FIPPA, by an order of a court or tribunal or otherwise required at law

Conflict of Interest and Non Disclosure



Everyone involved in a competitive procurement process must declare actual or potential conflicts of interest

- Conflicts of interest apply to all employees, advisors, external consultants or suppliers
- Evaluation Team members will be required to sign both a Conflict of Interest statement and a Non Disclosure declaration for each competitive procurement initiative
- Suppliers will be asked to declare any conflicts of interest when submitting responses

Calculating Total Procurement Value

Volume must be aggregated to the highest reasonable level

	Annual Spend/Buy (excluding taxes)	Base Term	Extension (dollar value extension or time extension)	Total Procurement Value (base term + extensions)	Core Procurement Type
A	\$25,000/a	3 years	none	\$75,000	Invitational
B	\$25,000/a	3 years	2 years	\$125,000	Open
C	\$25,000/a	3 years	1 + 1 year	\$125,000	Open

Non Competitive Procurement



- Organizations may conduct non-competitive procurement provided they do not do so for the purposes of avoiding competition between suppliers or in order to discriminate against suppliers
- Organizations are strongly encouraged to use this process on a true exception basis
- They must:
 - Determine whether it is a single or sole source purchase per the AIT
 - Provide a sound rationale to support the decision
 - Secure approval per Board approved Approval Authority Schedule
 - For consulting services:
 - \$0 up to but not including \$1,000,000: President/CEO
 - >\$1,000,000: Board of Directors

Single Source Exceptions (examples from AIT)



- 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 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.

- In the absence of a receipt of any bids in response to a call for proposals or tenders made in accordance with the Directive.

Vendors of Record/ RFSQ

- Using the Vendor of Record process can reduce costs by establishing strategic relationships with a small group of suppliers
- A Request for Supplier Qualifications (RFSQ) is an open, competitive process used to gather information on supplier capabilities and qualifications, with the intention of creating a list of pre-qualified vendors (Vendor of Record or VOR)
- The RFSQ is a two stage competitive process
 - A) The VOR list is established through an open, competitive process
 - B) An RFP or RFQ is issued where only the suppliers identified in the VOR list will be invited to respond
- Organizations are expected to check for an existing Ministry of Government Services (MGS) established VOR arrangement before conducting an RFSQ

RFSQ Procedure Checklist

The organization must determine and communicate in the RFSQ:

- Minimum number of suppliers required to have a VOR list
- VOR list schedule (minimum invited to 2nd phase by procurement threshold)
- VOR ceiling price
- How and when suppliers can be added to the VOR list
- How suppliers can be removed from the VOR list
- Method of inviting suppliers from the VOR list to respond in the 2nd phase
- How to handle VOR list exceptions
 - E.g., VOR list dips below minimum, VOR list minimum < VOR list schedule)

Contract Management

- Procurements and the resulting contracts must be managed responsibly and effectively, e.g.:
 - Payments must be made in accordance with provisions of the contract. All invoices must contain detailed information sufficient to warrant payment.
 - Supplier performance must be managed and documented, and any performance issues must be addressed.
 - Organizations should include a dispute resolution process in their contracts.

- For Services, organizations must:
 - Establish clear terms of reference for the assignment. Terms should include objectives, background, scope, constraints, staff responsibilities, tangible deliverables, timing, progress reporting, approval requirements and knowledge transfer requirements.
 - Ensure that expenses are claimed and reimbursed only where the contract explicitly provides for reimbursement of expenses, as set out in the *Broader Public Sector Accountability Act, 2010* (s.10)

Break

10:15 – 10:45

Evaluations and Other Burning Questions

Evaluations and Other Burning Questions

- Evaluation Process
- Vendor Debriefing
- Bid Dispute Resolution
- Value Add Incentives

Evaluation Process

- The Procurement Directive reinforces the significance of the evaluation process in ensuring fair and transparent evaluations of proponent responses

- It establishes guidelines for
 - Management of the evaluation process
 - Identification of Bid Administrator
 - Membership of evaluation teams
 - Development of evaluation criteria
 - Management of confidential information
 - Disclosure of conflicts of interest

- Evaluators must follow the evaluation process outlined in the competitive document when evaluating responses

- Evaluation criteria and weightings must:
 - Be developed, reviewed & approved before a competitive procurement process begins
 - Be included in the competitive documents
 - Cannot be changed once the RFX is issued, unless an addendum is issued in the same manner as the original document
 - Differentiate between mandatory and rated requirements

- The RFX must include:
 - All weights, including sub-weights, for rated requirements
 - Descriptions of any short-listing processes
 - The role and weighting of reference checks, oral interviews and demonstrations
 - Descriptions of the price/cost evaluation methodology
 - The method to resolve a tie score

Alternative Strategies

- 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.

Supplier Selection Process

- Each member of the evaluation team completes an evaluation matrix rating each of the proponents
 - Everything they say or document must be fair, factual, fully defensible
 - Evaluations must not discriminate or exercise preferential treatment

- Overall scores are determined based on the average of all inputs

- Pricing envelopes may not be opened until all other criteria have been evaluated

- Selection must be based on the highest ranked submission(s) meeting all mandatory requirements

Vendor 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.

- 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
- Organizations must decide which alternative dispute resolution will be used as the primary bid dispute resolution process, e.g.:
 - Arbitration
 - Mediation
 - Negotiation

Value Add Incentives

Value-Add Incentives - Principles



- 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.
- Value-add incentives are not addressed in the BPS Procurement Directive and are at the discretion of each Organization. It is recommended that each Organization have a policy on value-add incentives.

Value-Add Incentives - Principles



- 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

Value-Add Incentives - Rules



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.