

Broader Public Sector Procurement Directive

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Table of Contents

PREAMBLE.....	3
1. PURPOSE	3
2. APPLICATION AND SCOPE	3
3. PRINCIPLES	3
4. KEY DEFINITIONS	4
5. EXEMPTIONS, EXCEPTIONS, AND NON-APPLICATIONS UNDER TRADE AGREEMENTS.....	4
6. VALUE OF PROCUREMENT	5
7. MANDATORY REQUIREMENTS.....	6
7.1 SUPPLY CHAIN CODE OF ETHICS (CODE).....	6
7.2 PROCUREMENT POLICIES AND PROCEDURES (MANDATORY REQUIREMENTS).....	7
7.2.1 <i>Mandatory Requirement #1: Segregation of Duties</i>	7
7.2.2 <i>Mandatory Requirement #2: Approval Authority</i>	7
7.2.2.1 <i>Goods and non-consulting services</i>	7
7.2.2.2 <i>Consulting services</i>	7
7.2.3 <i>Mandatory Requirement #3: Competitive Procurement Thresholds</i>	8
7.2.4 <i>Mandatory Requirement #4: Information Gathering</i>	8
7.2.5 <i>Mandatory Requirement #5: Supplier Pre-Qualification</i>	8
7.2.6 <i>Mandatory Requirement #6: Posting Competitive Procurement Documents</i>	9
7.2.7 <i>Mandatory Requirement #7: Timelines for Posting Competitive Procurements</i>	9
7.2.8 <i>Mandatory Requirement #8: Bid Receipt</i>	9
7.2.9 <i>Mandatory Requirement #9: Evaluation Criteria</i>	9
7.2.10 <i>Mandatory Requirement #10: Evaluation Process Disclosure</i>	10
7.2.11 <i>Mandatory Requirement #11: Evaluation Team</i>	10
7.2.12 <i>Mandatory Requirement #12: Evaluation Matrix</i>	10
7.2.13 <i>Mandatory Requirement #13: Winning Bid</i>	10
7.2.14 <i>Mandatory Requirement #14: Non-Discrimination</i>	10
7.2.15 <i>Mandatory Requirement #15: Executing the Contract</i>	10
7.2.16 <i>Mandatory Requirement #16: Establishing the Contract</i>	11
7.2.17 <i>Mandatory Requirement #17: Termination Clauses</i>	11
7.2.18 <i>Mandatory Requirement #18: Term of Agreement Modifications</i>	11

7.2.19 *Mandatory Requirement #19: Contract Award Notification* 11

7.2.20 *Mandatory Requirement #20: Supplier Debriefing*..... 11

7.2.21 *Mandatory Requirement #21: Non-Competitive Procurement* 11

7.2.22 *Mandatory Requirement #22: Contract Management*..... 12

7.2.23 *Mandatory Requirement #23: Procurement Records Retention* 12

7.2.24 *Mandatory Requirement #24: Conflict of Interest*..... 12

7.2.25 *Mandatory Requirement #25: Bid Dispute Resolution* 13

8. OTHER RELATED POLICIES 13

9. DEFINITIONS 13

PREAMBLE

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

1. PURPOSE

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;
- To outline responsibilities of BPS organizations throughout each stage of the procurement process; and
- To ensure that procurement processes are managed consistently throughout the BPS.

2. APPLICATION AND SCOPE

This Directive applies to all designated broader public sector organizations as provided for under section 12 of the *Broader Public Sector Accountability Act, 2010*. This 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	<ul style="list-style-type: none">• Hospitals• School boards• Colleges• Universities• Community Care Access Corporations• Children’s Aid Society
January 1, 2012	<ul style="list-style-type: none">• Publicly funded organizations that received public funds of 10 million dollars or more in the previous fiscal year of the Government of Ontario

3. PRINCIPLES

This Directive is based on the five key principles that allow Organizations to achieve value for money while following a procurement process that is 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 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.

4. KEY DEFINITIONS

In this Directive,

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

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

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

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

5. 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.

6. VALUE OF PROCUREMENT

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

7. MANDATORY REQUIREMENTS

7.1 SUPPLY CHAIN CODE OF ETHICS (CODE)

The Code does not supersede codes of ethics that Organizations have in place, but supplements such codes with supply chain-specific standards of practice.

Organizations must formally adopt the Code in accordance with their governance processes. The policy intent is to establish that the conduct of all Members of an Organization involved with Supply Chain Activities must be in accordance with the Code.

The Code must be made available and visible to all Members of the Organization, as well as suppliers and other stakeholders involved with Supply Chain Activities.

Ontario Broader Public Sector (BPS) Supply Chain Code of Ethics

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

I. Personal Integrity and Professionalism

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

II. Accountability and Transparency

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

III. Compliance and Continuous Improvement

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

7.2 PROCUREMENT POLICIES AND PROCEDURES (MANDATORY REQUIREMENTS)

Organizations must comply with the requirements set forth in this Directive.

7.2.1 *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.

7.2.2 *Mandatory Requirement #2: Approval Authority*

7.2.2.1 *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, 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.

7.2.2.2 *Consulting services*

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

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

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.

7.2.3 **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.

Goods, 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 procurement (minimum of three suppliers are invited to submit a bid)	Recommended
\$100,000 or more	Open competitive process	Required
Consulting Services		
Total Procurement Value	Means of Procurement	Recommended/Required
\$0 up to but not including \$100,000	Invitational or open competitive process	Required
\$100,000 or more	Open competitive process	Required

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.

7.2.4 **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.

7.2.5 **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.

7.2.6 *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.

7.2.7 *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.

7.2.8 *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.

7.2.9 *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.

7.2.10 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 tie score.

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

7.2.11 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.

7.2.12 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.

7.2.13 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.

7.2.14 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.

7.2.15 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.

7.2.16 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.

7.2.17 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.

7.2.18 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.

7.2.19 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.

7.2.20 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.

7.2.21 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.

7.2.22 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 Directive¹ 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.

7.2.23 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.

7.2.24 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

¹ As set out in the *Broader Public Sector Accountability Act, 2010* (s.10)

potential conflicts of interest. Where a conflict of interest arises, it must be evaluated and an appropriate mitigating action must be taken.

7.2.25 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.

8. OTHER RELATED POLICIES

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

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

9. DEFINITIONS

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

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

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

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

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

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

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

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

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

“Construction” means construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, the supply of products and materials, the supply of equipment and machinery if they are included in and incidental to the construction, and the installation and repair of fixtures of a building, structure or other civil engineering or architectural work, but does not include professional consulting services related to the construction contract unless they are included in the procurement.

“Consultant” means a person or entity that under an agreement, other than an employment agreement, provides expert or strategic advice and related services for consideration and decision-making.

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

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

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

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

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

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

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

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

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

“Organizations” means all organizations listed in Application and Scope, Section 2.

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

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

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

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

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

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

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

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

“Purchase Order (PO)” means 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)” means a document used to gather information on supplier interest in an opportunity or information on supplier capabilities/qualifications. This mechanism may be used when a BPS organization wishes to gain a better understanding of the capacity of the supplier community to provide the services or solutions needed. A response to a

RFEI must not pre-qualify a potential supplier and must not influence their chances of being the successful proponent on any subsequent opportunity.

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

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

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

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

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

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

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

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

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

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