

## OHTN PROCUREMENT POLICY

### General

This policy has been established to comply with the *Broader Public Sector Accountability Act* (“BPSAA”) and applies to all acquisitions of goods and services, consulting services, IT purchases and construction made by OHTN using public funds. This policy is in place to ensure that the procurement processes are fair and transparent to all stakeholders.

The five key principles driving this policy are:

- **Accountability** – we must be accountable for our decisions and the appropriateness of the process we use
- **Transparency** – we must provide equal access to information on procurement opportunities, processes and results
- **Value for Money** – we must maximize the use of public funds
- **Quality of Service Delivery** – front line services must receive the right product, at the right time and in the right place
- **Process Standardization** – standardization removes inefficiencies and creates a level playing field

### Code of Ethics

In accordance with the Broader Public Sector Procurement Directive effective January 1 2012, OHTN formally adopts the Supply Chain Code of Ethics, as follows:

## Ontario Broader Public Sector Supply Chain Code of Ethics

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

### **I. Personal Integrity and Professionalism**

All individuals involved with purchasing or other supply chain-related 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. All 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**

All individuals involved in purchasing or other supply chain-related activities must comply with this Code of Ethics and the laws of Canada and Ontario. All individuals should continuously work to improve supply

## **I. Segregation of Duties – Mandatory Requirement 1**

Three of the five functional procurement roles listed below must be segregated. Responsibilities for these roles must lie with different departments or individuals.

<b>Procurement Role</b>	<b>OHTN Position</b>
Requisition	Project Lead
Budgeting	Director, Administration and Finance
Commitment	Scientific and Executive Director
Receipt	Project Lead
Payment	Bookkeeper / Director Administration and Finance

## II. Approval Authority and Competitive Procurement Thresholds – Mandatory Requirement 2

Unlike goods and non-consulting services, the BPSAA requires that all consulting services be procured competitively, unless a specific exemption under the Agreement on Internal Trade (AIT) is applicable (see list below).

The following definitions based on section 1 of the BPSAA are set out in the *Broader Public Sector Procurement Directive Implementation Guidebook* (April 2011)<sup>1</sup>:

“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.

A consultant provides their expertise and advice in order to assist an organization in its decision-making, especially with respect to matters involving strategic direction. A contractor, however, typically retained under a fee-for-service arrangement, performs specific tasks or a particular role under a client’s direction for a fixed period of time. A contractor may be an expert in their field without being employed as a consultant, if their services are engaged to carry out certain tasks assigned by OHTN rather than being engaged by OHTN to assist it with its organizational decision-making. Whether or not a service constitutes “consulting” depends on the purpose of the service being provided, not on the expertise of the person providing that service.

The following is the Approval Authority Schedule (AAS) showing the level of authority required to approve acquisitions of Goods, Non-Consulting Services, Construction and IT. Consulting Services are addressed in the next section.

Goods, Non-Consulting Services, Construction and IT		
Procurement Value Before Tax	Means of Procurement	Approval Required
0 – 99	Petty Cash	Manager
100 – 4,999	Certified invoice, OHTN MC	Department Director
5,000 – 24,999	Certified invoice	Scientific and Executive Director
25,000 – 99,999	Certified invoice, Contract	Board of Directors
100,000 & Above	Open Competitive Procurement (b)	Board of Directors

<sup>1</sup> Issued by the Minister of Finance; see p.45.

Available exemptions to the BPSAA requirements for competitive procurement as at April 1, 2011 are listed in Section 10.3.4.1 (pp.30-31) of the *Broader Public Sector Procurement Directive Implementation Guidebook* issued by the Minister of Finance (April 2011), as follows:

- Procurement of goods intended for resale to the public;
- Contracts with a public body or 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 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;
- Procurement of goods and services for use outside Canada as well as construction work done outside Canada; and
- Health services and social services.

**III. Competitive Procurement Thresholds – Mandatory Requirement 3**

The following shows the dollar value thresholds where the approval and procurement method changes in accordance with the BPSAA

Consulting Services		
Procurement Value Before Tax	Means of Procurement	Approval Required
0 – 4,999	Invitational Procurement (a)	Scientific and Executive Director
5,000 – 24,999	Invitational Procurement (a)	Scientific and Executive Director

25,000 – 99,999	Invitational Procurement (a)	Board of Directors
100,000 & Above	Open Competitive Procurement (b)	Board of Directors

**a) Invitational Competitive Procurement**

A minimum of three bids is required when a consulting contract is up for tender and falls under the invitational competitive procurement threshold.

**b) Open Competitive Procurement**

The following is the list of actions that must be followed according to BPS Procurement Directive that apply to the competitive procurement process.

**Information Gathering - Mandatory Requirement 4**

- Where results of informal supplier or product research are insufficient, formal processes such as a Request for Information (RFI) or Request for Expression of Interest (RFEI) may be used if warranted, taking into consideration the time and effort required to conduct them.
- A response to RFI or RFEI must not be used to pre-qualify a potential supplier and must not influence the chances of the participating suppliers from becoming the successful proponent in any subsequent opportunity.

**Supplier Pre-Qualification - Mandatory Requirement 5**

- The Request for Supplier Qualification (RFSQ) enables OHTN 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 OHTN to call on any supplier to provide goods or services as a result of pre-qualification.

**Posting Competitive Procurement Documents - Mandatory Requirement 6**

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

### **Timelines for Posting Competitive Procurements - Mandatory Requirement 7**

- OHTN must provide suppliers a minimum response time of 15 calendar days for procurement of goods and services valued at \$100,000 or more, and wherever possible, must consider providing suppliers a minimum response time of 30 calendar days for procurements of high complexity, risk, and/or dollar value.

### **Bid Receipt - Mandatory Requirement 8**

- Bid submission date and closing time must be clearly stated in competitive procurement documents and must be a normal working day (Monday to Friday, excluding provincial and national holidays).
- Submissions that are delivered after the closing time must be returned unopened.

### **Evaluation Criteria - Mandatory Requirement 9**

- 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 Mandatory Requirement #14 of this policy.
- The evaluation criteria are to be altered only by means of addendum to the competitive procurement documents.
- OHTN may request suppliers to provide alternative strategies or solutions as a part of their submission. OHTN 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.

### **Evaluation Process Disclosure - Mandatory Requirement 10**

- 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.

#### **Evaluation Team - Mandatory Requirement 11**

- 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.

#### **Evaluation Matrix - Mandatory Requirement 12**

- 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.

#### **Winning Bid - Mandatory Requirement 13**

- 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.

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

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

### **Executing the Contract - Mandatory Requirement 15**

- The agreement between OHTN 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 OHTN 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.

### **Establishing the Contract - Mandatory Requirement 16**

- 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 OHTN and the successful supplier must be defined formally in a signed written contract before the provision of supplying goods or services commences.

### **Termination Clauses - Mandatory Requirement 17**

- All contracts must include appropriate cancellation or termination clauses. OHTN should seek legal advice on the development of such clauses.
- When conducting complex procurements, OHTN should consider, as appropriate, the use of contract clauses that permit cancellation or termination at critical project life-cycle stages.

### **Term of Agreement Modifications - Mandatory Requirement 18**

- 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.

### **Contract Award Notification - Mandatory Requirement 19**

- For procurements valued at \$100,000 or more, OHTN 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 OHTN was executed. Contract award notification must list the name of the successful supplier, agreement start and end dates, and any extension options.

### **Supplier Debriefing - Mandatory Requirement 20**

- For procurements valued at \$100,000 or more, OHTN must inform all unsuccessful suppliers about their entitlement to a debriefing.
- OHTN must allow unsuccessful suppliers 60 calendar days following the date of the contract award notification to request a debriefing.

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

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

### **Contract Management - Mandatory Requirement 22**

- 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, OHTN should include a dispute resolution process in their contracts.

- For services, OHTN 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 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.

### **Procurement Records Retention - Mandatory Requirement 23**

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

### **Conflict of Interest - Mandatory Requirement 24**

- OHTN must monitor any conflict of interest that may arise as a result of the staff, volunteers, 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.

### **Bid Dispute Resolution - Mandatory Requirement 25**

- 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.