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TALK**



A Health Industry Seminar Series

Broader Public Sector Supply Chain Guidelines: A Refresher and Status Report

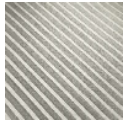
April 21st, 2010

Bill Pigott

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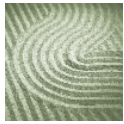
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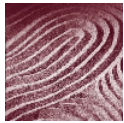
Agenda



- BPS Guideline Refresher



- Genesis

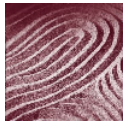
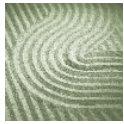
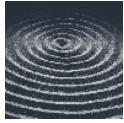


- Application

- Current Status

- Where are we?

- Implementation issues



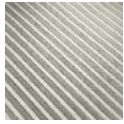
BPS Guideline Refresher

Part 1: Genesis

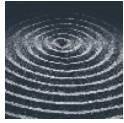
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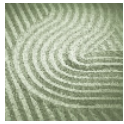
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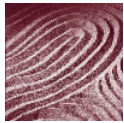
Agreement on Internal Trade



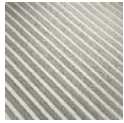
- Goal: reduce trade barriers



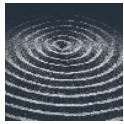
- Sets out rules respecting procurement



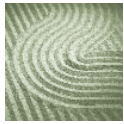
- Effective July 1, 1999 Annex 502.4 extended the procurement provisions to health and social service agencies



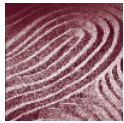
Agreement on Internal Trade



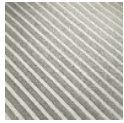
- Section L of Annex 502.4 lists circumstances when the Annex does not apply



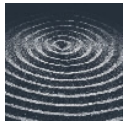
E.g.



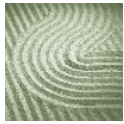
- contracts with non-profit organizations
- services that may be provided only by medical directors, dentists, nurses, pharmacists
- health services and social services



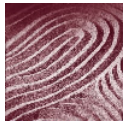
Agreement on Internal Trade



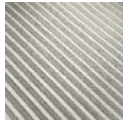
- If the AIT applies competitive procurement is required where



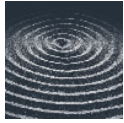
- construction valued > \$250,000
- goods/services valued > \$100,000



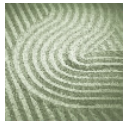
unless qualifying for an AIT exemption (Annex 502.4 Appendix C and D)



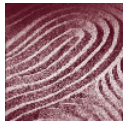
BPS Guidelines



- Prepared at the direction of Ontario's Treasury Board of Cabinet



- Version 1 released April 2009

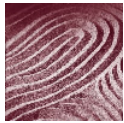
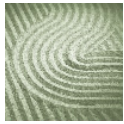
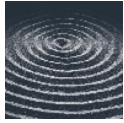


- Work in progress – V1.1 expected in spring 2010

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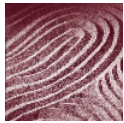
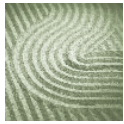
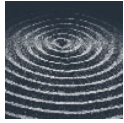


BPS Guideline Refresher

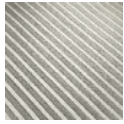
Application: Part 2



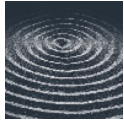
BPS Guidelines



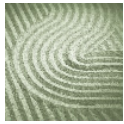
- To be incorporated into funding agreements of “In Scope Recipients”
- By March 2010 ISR to adopt
 - Supply Chain Code of Ethics
 - Procurement Policies and Procedures



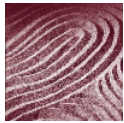
BPS Guidelines



- An ISR =



- organizations receiving > \$10 million funding per fiscal year from MOHLTC

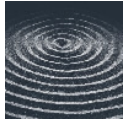


- shared service organizations owned or funded by ISR

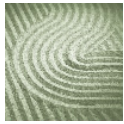
- Non ISR: AIT may apply



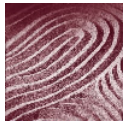
BPS Guidelines



- Competitive procurement > \$100,000



- For goods/services/construction

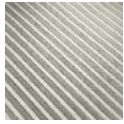


- Unless except as

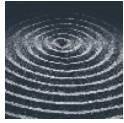
- Single source
- Sole source

- No sectorial exemptions

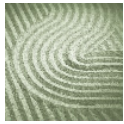
- Tighter limits than AIT, generally



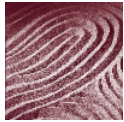
BPS Guidelines



- Single Source = single supplier even where other suppliers capable



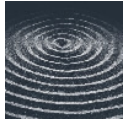
E.g.



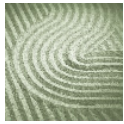
- unforeseen situation of urgency
- matters of confidential or privileged nature
- absence of compliant proposals



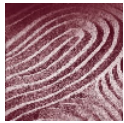
BPS Guidelines



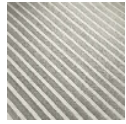
- Sole Source = only supplier available



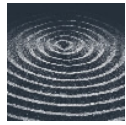
E.g.



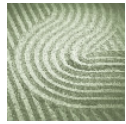
- ensure compatibility with existing products
- goods/services can only be supplied by particular supplier
- procurement of real property



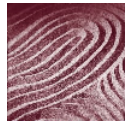
Funding Terms



- BPS Guidelines to be included in funding agreements for In Scope Recipients

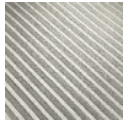


- Even if not subject to BPS Guidelines funding agreements may contain thresholds for when competitive procurement process required

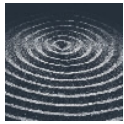


E.g.

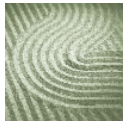
- M-SAA – competitive process if >\$25,000



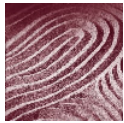
Corporate Policies

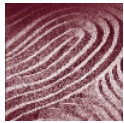
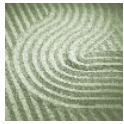
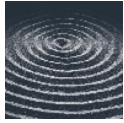


- Corporation may have policies providing direction on procurement activities



- Policies can not be less stringent than external obligations (AIT, BPS) BUT can be more stringent





Current Status Where Are We?

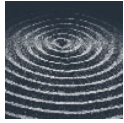
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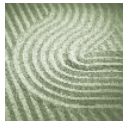
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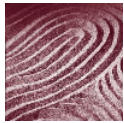
BPS Guidelines: Where Are We?

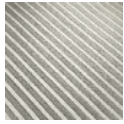


- “First Year Principles” (V 1.0)
 - “Supply Chain Code of Ethics”
 - “Procurement Policies & Procedures”



- Code & Policies
 - In workbook with definitions
 - Required for April 1st, 2010
- Guidelines grouped (future)
 - Leading practices
 - Standards
 - Metrics

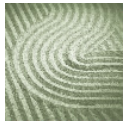




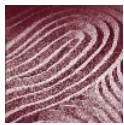
BPS Guidelines: Where Are We?

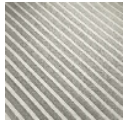


- Annual report by ISR
 - Status v. requirement
 - Progress report with work plan
 - Benefits gleaned

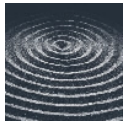


- Until accountability framework done
 - Adopt “Code” & “Policies”
 - By March 31/10



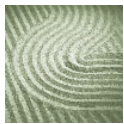


BPS Guidelines: Where Are We?



- Supply Code Chain of Ethics

- Excerpt in handout

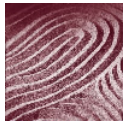


- Goal: ethical/professional/accountable

- Personal integrity

- Accountability & transparency

- Compliance & continuous improvement

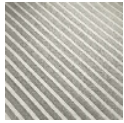


- Compliance checklist included

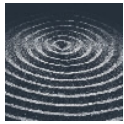
- Distributed & communicated

- Visible & Available

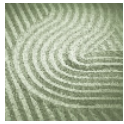
- Meets described standards



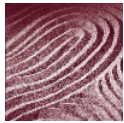
BPS Guidelines: Where Are We?



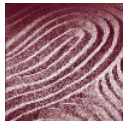
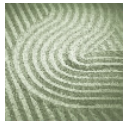
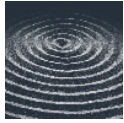
- PPP in 25 mandatory requirements
 - Excerpt in handouts



- Divided into 10 subsets in sequence



- Duties/authority levels (2)
- Competitive or not (1)
- Competitive (2)
- Purchasing (2)
- Evaluation (8)
- Contract award (6)
- Non-competitive procurement (1)
- Procurement document/record retention (1)
- Conflict of interest (1)
- Bid protest procedure (1)

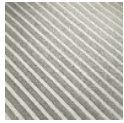


Current Status Implementation Issues

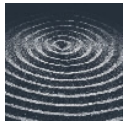
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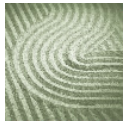


BPS Guidelines: Issues



- Procurement minefield (not so good)

- Bid case in 1981 (*Ron*)
- Thousands of cases since
- Invaded all public buys (RFPs & bids)

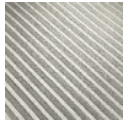


- Ontario Buys mandate (good)

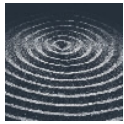
- Improve BPS supply chain with
 - Leading practices
 - Standards
 - Metrics

- Issues may come from

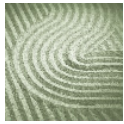
- Implementation difficulties
- Assumptions/concept
- PPP in practice



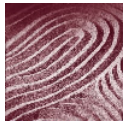
BPS Guidelines: Issues



- Implementation difficulties



- Resources are limited



- Other preoccupations (budget)

- Adopting Code & PPP

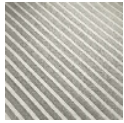
- Assessment against existing

- Reframing processes

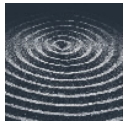
- Educating staff

- Getting comfortable

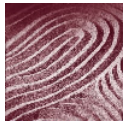
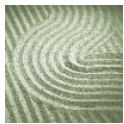
- Behavior of LHINs/MOHLTC?



BPS Guidelines: Issues

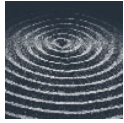


- Assumptions/concepts
 - One size (Contract A) fits all?
 - Process trumps outcome?
 - What's fair?
 - AIT intra-provincial
- Version 1.1 in the works
 - Advisors see problems
 - Owner community advocating

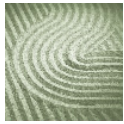




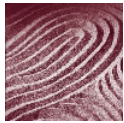
BPS Guidelines: Issues



- PPP in practice

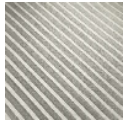


- Model: intended to help



- Rules may grate
 - Capturing 2 not-for-profits (#3)
 - After closing changes (#9)
 - Position of evaluators (#12)
 - Contract part of procurement docs (#17)
 - Justifying decision to by-pass (#22)
 - Bid protest (intra Ontario) (#25)

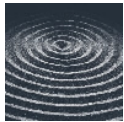
IS A COMPETITIVE PROCUREMENT PROCESS REQUIRED?



If Yes

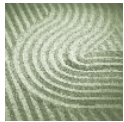
Are you a BPS organization receiving >\$10 million in funding from the MOHLTC or a Shared Services Organization owned by such an organization?

If No



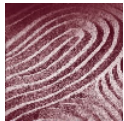
BPS Guidelines apply

AIT may apply



Procuring goods, services or construction valued over \$100,000?

Does the procurement fall under the Non-Application Section (L) of Annex 502.4? e.g. contracts with non-profit services provided by licensed health professionals, etc.



Yes

No

If Yes AIT/Annex does not apply

If No AIT/Annex applies

Qualify for:

- single source exemption (s. 5.3.9.1.1 of BPS)
- sole source exemption (s. 5.3.9.1.2 of BPS)?

Do your funding agreements or corporate policies prescribe a competitive process?

Procuring construction valued over \$250,000 or goods/services valued over \$100,000

No

Yes

Yes

No

Yes

No

Qualify for an exemption under Appendix C or D of Annex 502.4?

Competitive process not required

Competitive process not required

No

Yes

COMPETITIVE PROCESS REQUIRED

COMPETITIVE PROCESS REQUIRED

Competitive process not required

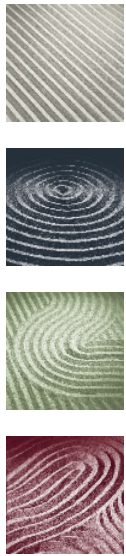
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A Health Industry Seminar Series

Broader Public Sector Supply Chain Guidelines: A Refresher and Status Report

April 21st, 2010

Bill Pigott

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4.3 SUPPLY CHAIN CODE OF ETHICS

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 chain policies and procedures, to improve their supply chain knowledge and skill levels, and to share leading practices.²

² Sources: Purchasing Management Association of Canada Code of Ethics, Ontario Public Buyers Association, Plexxus and Toronto District School Board.

4.4 SUPPORTING DOCUMENTS

4.4.1 SUPPLY CHAIN CODE OF ETHICS — COMPLIANCE CHECKLIST

The following is a checklist to assist organizations in determining whether they have successfully adopted the key elements of the *Supply Chain Code of Ethics*.

BPS organizations must ensure that the *Supply Chain Code of Ethics* or the organizational equivalent:

- a. Is distributed to all employees involved in supply chain activities, including but not limited to departments such as:
 - > Purchasing;
 - > Materials Management;
 - > Inventory Management;
 - > Planning;
 - > Logistics/Distribution; and
 - > Account Payables;
- b. Is communicated to all individuals outside the above departments who are involved in purchasing and other supply chain-related activities;
- c. Is visible in procurement or materials management departments;
- d. Is formally approved and visibly endorsed by the board or the organization's management team in accordance with the organization's governance structure;
- e. Is electronically available to all employees of the organization through an internal website or document centre;
- f. Contains all the elements found under Personal Integrity and Professionalism;
- g. Contains all the elements found under Accountability and Transparency; and
- h. Contains all the elements found under Compliance and Continuous Improvement.

5.4.2 LIST OF MANDATORY REQUIREMENTS

Within the PPP, 25 policies and procedural rules have been identified. These requirements make up the mandatory requirements and have been summarized below.

Segregation of Duties and Approval Authority Levels

1. Segregation of Duties — BPS organizations must segregate at least three of the five functional roles. Responsibilities for these functions should lie with different departments or at a minimum with different individuals. In circumstances where it is not feasible to segregate three roles, as in the case with smaller organizations, adequate compensating controls approved by the external auditor will be acceptable. (Section 5.3.6.1)
2. Approval Authority — BPS organizations must have a documented delegation of authority schedule that outlines the organization's authority levels for each of the five functional roles described in the segregation of duties (Section 5.3.6.1) and seek the necessary approval for all procurements prior to conducting the procurement. (Section 5.3.6.2)

Competitive vs. Non-Competitive Procurement

3. Competitive vs. Non-Competitive Procurement Process Determination — In accordance with the AIT, the Ontario-Quebec Procurement Agreement and the PPP's principle of transparency, BPS organizations must conduct open competitive procurements where the estimated value of procurement of goods, services or construction⁴ is \$100,000 or greater. (Section 5.3.7.1)

Competitive Procurement

4. Information Gathering — A response to an RFI or RFEI must not pre-qualify a potential supplier and must not influence their chances of being the successful proponent on any subsequent opportunity. (Section 5.3.8.1.2)
5. Pre-Qualification — BPS organizations must ensure that the terms and conditions built into the RFSQ contain specific language to disclaim any obligation on the part of the BPS organization to actually call on any supplier as a result of the pre-qualification to supply such materials or services. (Section 5.3.8.1.3)

Purchasing

6. Advertising and Posting Competitive Documents to Market — In accordance with the AIT, calls for competitive procurements shall be made through an electronic tendering system that is equally accessible to all Canadian suppliers.

Construction contracts between \$100,000 and \$250,000 are not subject to the requirements of the AIT. Calls for those competitive procurements can be made through an electronic tendering system and/or one or more of the following methods:

- a. Publication in one or more predetermined daily newspapers that are easily accessible to all Canadian suppliers; or
- b. The use of source lists, such as VORs or preferred suppliers lists. (Section 5.3.8.2.3)

⁴ The threshold for construction has been set to align with the lower of the two requirements as set by the AIT and the Ontario-Quebec Procurement Agreement respectively.

7. Timelines for Posting Competitive Procurements — Purchasing BPS organizations must provide suppliers a minimum response time of 15 calendar days for procurements valued at \$100,000 or more. (Section 5.3.8.2.5)

Evaluation

8. Bid Receipt — BPS organizations must ensure that the closing date is set on a normal working day (Monday to Friday, excluding provincial and national holidays). Submissions that are delivered after the closing time must not be considered. (Section 5.3.8.3.1)
9. Evaluation Criteria — Evaluation criteria should be developed, reviewed and approved before the competitive process begins. These criteria must be included in the competitive documents. The competitive documents must also identify those criteria that are considered mandatory and any technical standards that need to be met. The evaluation criteria cannot be changed or altered once the competitive process has begun. (Section 5.3.8.3.2)
10. Evaluation Process — BPS organizations must fully disclose the evaluation methodology and process to be used in assessing a supplier's submission. (Section 5.3.8.3.3)
11. Evaluation Team — Evaluation team members must be aware of the restrictions related to confidential information shared through the competitive process and refrain from engaging in activities that may create or appear to create a conflict of interest. BPS organizations must require team members to sign a conflict-of-interest declaration and non-disclosure agreement. (Section 5.3.8.3.4)
12. Evaluation Matrix — BPS organizations must ensure that each member of the evaluation team has completed an evaluation matrix rating each of the proponents. Records of evaluation scores must be auditable. Evaluators should be aware that everything they say or document must be fair, factual, fully defensible and may be subject to public scrutiny. (Section 5.3.8.3.5)
13. Selection Process — BPS organizations must select only the highest ranked submission(s) that have met all mandatory requirements set out in the related procurement document. In responding to procurement documents, suppliers may sometimes propose alternative strategies or solutions to the organization's business needs. Unless expressly requested in the procurement documents, organizations must not consider alternative strategies or solutions proposed by a supplier. (Section 5.3.8.3.5)
14. Tie-Score Process — The method to resolve a tie score must be identified in the evaluation criteria of the RFP, including weighting, if applicable. Tie-break criteria are also subject to the rules of non-discrimination defined in Section 5.3.8.3.6. (Section 5.3.8.3.5)
15. Non-Discrimination — In compliance with the AIT, BPS organizations must refrain from any discrimination or preferred treatment in awarding a contract to the preferred supplier from the competitive process, unless justifiable based on the circumstances described below. (Section 5.3.8.3.6)

Contract Award

16. Executing the Contract — The agreement between the purchasing BPS organization and the successful supplier must be defined formally in a signed written contract before the provision of the goods, services or construction commences. When executing the contract, the organization must obtain the supplier signatures before obtaining the designated organization's signature. In situations where an immediate need exists for goods or services and the purchasing organization and the supplier are unable to finalize a contract, a letter of intent, memorandum of understanding (MOU) or interim purchase order may be used. This will allow for the immediate needs to be met, while final negotiations take place towards finalizing the contract. (Section 5.3.8.4.1)
17. Establishing the Contract — The contract must be finalized using the form of agreement/contract that was released with the procurement document. (Section 5.3.8.4.1)
18. Termination and Cancellation Clauses — All contracts must include appropriate cancellation or termination clauses and BPS organizations should seek appropriate legal advice on the development of these clauses. (Section 5.3.8.4.1)
19. Contract Extensions — The term of the agreement and any options to extend the agreement must be set out in the procurement document. Changes to the term of the agreement may change the procurement value. Prior written approval by the appropriate approval authority is necessary before changing contract start and end dates. Extensions to the term of agreement beyond what is set out in the procurement document are considered non-competitive procurements and BPS organizations must seek appropriate approval authority prior to proceeding. (Section 5.3.8.4.1)
20. Award Notification — For purchases valued at \$100,000 or greater, BPS organizations must post, in the same manner as the procurement documents were posted, the name(s) of the successful supplier(s). Contract award notification must occur only after the agreement between the successful supplier and the organization has been signed. The contract award notification must include the agreement start and end dates, including any options for extension and the total agreement value. (Section 5.3.8.4.2)
21. Vendor Debriefing Notification — For purchases valued at \$100,000 or greater, BPS organizations must inform all suppliers who participated in the procurement process of their entitlement to a debriefing. (Section 5.3.8.4.3)

Non-Competitive Procurement

22. Non-Competitive Procurement Documentation — When a BPS organization bypasses the competitive process for any of the situations identified in Section 5.3.9.1, formal documentation must be completed to support and justify the decision. This documentation must be completed and approved by the appropriate authority levels within the organization and may be used as supporting documentation in the case of a competitive dispute. (Section 5.3.9.2)

Procurement Documents and Records Retention

23. Records Retention — All procurement documents, as well as any other pertinent information for reporting and auditing purposes, must be maintained for a period of seven years and be in recoverable form if requested. (Section 5.3.11)

Conflict of Interest

24. Conflict of Interest — BPS organizations must consider any conflicts of interest during procurement activities applicable to all employees, external consultants or suppliers. The organization must require any individual involved in supply chain-related activities to declare all actual or potential conflicts of interest. (Section 5.3.12)

Bid Protest Procedures

25. Bid Protest Procedures — BPS organizations must communicate the bid protest procedures for suppliers in all competitive and procurement documents to ensure that any dispute is handled in a reasonable and timely fashion. BPS organizations must ensure that their process is compliant with the bid protest procedures as set out in the AIT and the Ontario-Quebec Procurement Agreement. (Section 5.3.13)