

An **RTPS** White Paper

The Ontario Government BPS Procurement Directive: Turning Regulation into Opportunity

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The **Ontario Government's Broader Public Sector (BPS) Procurement Directive** is an initiative aimed at better managing the disbursement of public funds. More specifically, it is meant to ensure that publically 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. It is specifically targeted at organizations that receive public funding but are not part of the government (i.e., members of the "broader public sector") including school boards, hospitals, universities, charities and other non-profit entities. These organizations are required to align their procurement policies and procedures with the regulations contained in the Directive and the degree of change required will be directly related to the current level of sophistication of such policies and procedures. Either internally, and/or with outside assistance, organizations must implement required changes in order to comply with the government's regulations.

As Canadian governments move into the second decade of the millennium they face formidable economic pressures on a number of fronts. Lingering deficits remain from a bailout-driven reaction to the global financial crisis, persistent investor nervousness has yielded a weak economic outlook, and consumer confidence remains low due to a slow US recovery and ongoing European financial challenges.

These pressures have contributed to greater attention being paid to domestic fiscal policies to help ensure that scarce public dollars are used effectively and waste minimized. The Ontario government, in particular, has recently been advised that its finances must be radically altered in an effort to reduce the provincial government deficit and support future productive growth. One way to help accomplish this is to better manage the disbursement of public funds.

Governments must maintain the trust of citizens by clearly demonstrating that the use of public funds is safeguarded against wastefulness, favouritism, and fraud. Accountability for tax dollars is of paramount importance and a key tool for the Ontario government in this ongoing battle is the Broader Public Sector (BPS) Procurement Directive. It is the latest manifestation of a general government movement to ensure that publicly funded goods and services are acquired in an open, fair, and transparent process.

What is the BPS Procurement Directive?

Recent concerns and media scrutiny of public sector procurement practices are not a new phenomenon and in fact the Ontario government originally issued an earlier less prescriptive program - the BPS Supply Chain Guideline - in April, 2009. That guideline has since evolved into the BPS Procurement Directive which has introduced more stringent controls.

At its core the Directive is a set of 25 mandatory requirements to which organizations must comply. The requirements are broad and address a number of key items in the competitive procurement process such as segregation of duties, posting procedures for competitive procurement documents, and procurement records retention. The Directive also requires adherence to the BPS Supply Chain Code of Ethics. Collectively, the requirements span the entire set of interactions that organizations will have

with potential suppliers during the competitive procurement process, and they support five key principles upon which the Directive is based:

- Accountability;
- Transparency;
- Value for money;
- Quality service delivery; and,
- Process standardization.

A notable consequence of the Directive is that a government in power is better positioned to avoid any embarrassing publicity surrounding the mishandling of broader public sector funds. The Directive places the onus on funded organizations to adhere to procurement best practices and in so doing may serve to deflect such negative fallout away from the government of the day.

Who does the Directive affect?

In April, 2011 the Directive was initially applied to hospitals, school boards, colleges/universities, and other large agencies in the province of Ontario. For the most part these organizations have already instituted required changes and are compliant with the regulations. As of January 1, 2012 the Directive was extended to any publicly funded organizations that received public funds of \$10 million or more (in fiscal 2010) from the Ontario government. These organizations are at different stages in their progress towards compliance and many have substantial work left to do.

All signs point to the possibility that, eventually, the Directive will be extended to apply to all publicly funded organizations, including those receiving less than \$10M annually – a move that will significantly increase the breadth of application. For the time being, the requirements of the Directive are not mandated for smaller non-profits, but rather presented as a set of useful guidelines that can (and should) be implemented. This initial flexibility in the application of the guideline makes sense: smaller non-profit organizations often simply do not have access to the resources necessary to become compliant right away. This early flexibility also reflects the fact that these organizations have access to less public funds and as such represent a smaller risk of exposure. However, it would be foolish to assume that the need for procurement rigor and accountability will not eventually turn from a suggestion to a legislated requirement for even smaller not for profit organizations.

How will organizations be affected?

The Directive will affect the current practices of organizations to varying degrees, depending on a number of factors:

- How formalized their current procurement policies and procedures are;
- The degree to which procurement best practices have already been incorporated into their processes;
- Nimbleness of the organization in its ability to effect internal change; and,

- The procurement-related resources (both internal and external) at their disposal and the sophistication of those resources.

Regardless of the degree to which organizations must change to achieve compliance with the Directive, there are a number of benefits that will be realized, along with some new challenges that will be encountered.

Implementation of the BPS Procurement Directive will have a broad effect by ensuring that procurement processes are managed consistently throughout the BPS. However, it can also drive several benefits to the individual organizations that comply, including:

- Clearly defined authorization levels within the organization and institute increased transparency and accountability;
- The application of standardized best practices and the formalization of policies and procedures;
- Reduction of the risk of untoward and potentially damaging behaviour within the organization, as it relates to the use of funds or relationships with suppliers;
- Defensible processes for board members and other external stakeholders;
- Motivation for the organization to pay attention to areas of spending that may not have been actively managed in the past; and,
- Clear direction within the organization related to how limited funds are spent.

Of course, to both meet minimal compliance requirements and take advantage of the potential benefits of the changes, some challenges will need to be overcome:

- Temptation to focus too closely on mechanics and lose sight of the overall role of the procurement function in enabling the organization to fulfill its mandate;
- Increase of paperwork (electronic and/or physical), more steps to be carried out, and more “boxes to be ticked” in the competitive procurement process;
- Potential increase in time to market and supplier contract award;
- Perceived loss of control over the procurement process for initiatives valued at over \$100,000 since the competitive process will be open to all potential vendors;
- Ambiguity for national organizations that have part of their operations in Ontario (and hence subject to the Directive) but manage procurement on a national basis;
- Increased scrutiny of the procurement process from outside interests;
- An initial flurry of competitive procurement activity required as the organization explores areas which have not been looked at in some time; and
- The potential that the additional administrative red tape and bureaucracy will hinder the organizations progress towards fulfilling its charitable mission.

So what is the verdict on the cost-benefit of compliance with the Directive? The key challenge of the procurement function will not change: procurement will still be required to balance the operational needs of the organization against the requirement to adhere to ethical, open, and transparent

procurement practices. What has changed is that government guidelines have tightened up the requirement for rigor in procurement practices significantly. The implementation of the Procurement Directive, however, should represent an opportunity rather than a hindrance. It is a catalyst that should propel organizations to overhaul existing outdated procurement practices and implement robust, visible solutions that allow the organization to not only demonstrate accountability in the use of public funds but also maximize the effectiveness of every dollar spent.

What do Non-Profit organizations need to do?

BPS organizations, particularly those that have been subject to the Directive since January, 2012, need to develop and document the policies, procedures, tools, and techniques that are required to achieve compliance with the Directive. They also need to establish the appropriate infrastructure to communicate and police these policies and procedures internally.

These requirements are not insignificant and achieving compliance will test the limits of resources, skill sets, and management capability within the organizations. With this in mind, there are several options available:

- Join forces with other similar organizations to share and leverage collective work;
- Make the changes using existing internal resources;
- Hire the resources (either temporarily or permanently); or,
- Engage an outside procurement group to assist in developing, implementing, and/or maintaining any required changes.

In summary, the Ontario Government's BPS Procurement Directive will significantly impact the way in which the competitive procurement process is managed within many Ontario organizations, especially those that have recently become subject to its guidelines. There is considerable work that must be undertaken to achieve compliance but once organizations have done so they will have emerged with stronger procurement functions, confident that they are positioned to ensure sensible and fair spending of any public funds that they receive.

Round Table Procurement Services (RTPS) is a professional services firm with significant expertise in helping non-profit organizations in Canada. We offer a unique combination of tools, approaches and people that come together to provide robust, tailored and realistic best practices for our clients. Our goal is to optimize procurement-related costs, efficiency and risk while supporting our client's achievement of their core mission.

RTPS assists non-profit organizations in understanding the implications of the Ontario Government's BPS Procurement Directive and developing and implementing policies and procedures that ensure ongoing compliance to the legislation. Our hands-on collaborative approach allows our clients to implement pragmatic and effective solutions that are sustainable over time.

For more information contact David Rourke at 416-816-6358, or send an email to info@rtps.ca, to discuss how RTPS might assist in achieving your organizational goals.

Official information on the specifics of the BPS Procurement Directive can be found here:
http://www.fin.gov.on.ca/en/bpssupplychain/documents/bps_procurement_directive.html.