

Skylark Children, Youth & Families

POLICY SECTION Finance	POLICY NAME Procurement Thresholds and Process Requirements	POLICY # FIN 412
SUBSECTION Procurement and Approval Authority	RESPONSIBILITY Senior Director of Corporate Services	APPROVED BY Chair of the Board June 2018
EFFECTIVE/REVISED DATE June 2018	LAST DATE REVIEWED June 2018	NEXT REVIEW DATE June 2022

POLICY:

Purpose

The purpose of this policy is to:

- Ensure that publicly funded goods and services, including construction, consulting services, and information technology are acquired through a process that is open, fair and transparent;
- Outline Skylark’s responsibilities throughout each stage of the procurement process;
- Ensure compliance with the Broader Public Sector (BPS) Procurement Directive of the Broader Public Sector Accountability Act, 2010.

Principles

This policy supports the five key principles as set out in the BPS Procurement Directive:

- **Accountability** – Skylark is accountable for the results of its procurement decisions and the appropriateness of the processes.
- **Transparency** – Skylark is transparent to all of its stakeholders. Wherever possible, stakeholders must have equal access to information on procurement opportunities, processes and results.
- **Value for Money** – Taxpayer dollars are used prudently and responsibly.
- **Quality Service Delivery** – Front-line services provided by Skylark, such as residential, day program and counseling services, must receive the right product at the right time in the right place.
- **Process Standardization** – standardized processes that remove inefficiencies and create a level playing field.

Exemptions, Exceptions, and Non-Applications under Trade Agreements

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

Due to the nature of Skylark’s Special Needs Team program services, the purchase of the following social services is exempt from the competitive procurement process:

- Residential services for individual children;
- Individual support services;
- Professional services for children and youth– i.e. – social work, psychiatry, etc..

While these services are exempt from the procurement process, management must ensure that the selection and contract management with the service providers is in keeping with the principles outlined in the directive.

Skylark may utilize non-competitive procurement only in situations outlined in the exemption, exceptions, or non-application clauses of the Agreement on Internal Trade (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.

A list of exceptions can be found in Appendix I – List of Exceptions Agreement on Internal Trade.

Procurement Mandatory Requirements

The BPS Procurement Directive outlines 25 mandatory requirements for the procurement process.

1 – Segregation of Duties

At least three of the five functional procurement roles must lie with different departments or at minimum different individuals:

ROLE	RESPONSIBLE
Requisition	Program Manager/ Director
Budgeting	Program Manager/Director
Commitment	Program Director/Chief Executive Officer/Board
Receipt	Program Manager
Payment	Authorized cheque signing authorities – Authorized Board, Chief Executive Officer and management

Where it is not feasible to segregate these roles, adequate compensating controls approved by an external auditor must be put in place.

2 – Approval Authority

The Approval Authority Schedule (AAS) for goods and non-consulting services must be approved by the board of directors of Skylark.

3 – Competitive Procurement Thresholds

Skylark must conduct open competitive procurements where the estimated value of procurement of goods or services is \$100,000 or greater. This must be in accordance with applicable trade agreements.

Skylark must competitively procure consulting services irrespective of value. Any exemptions must be in accordance with the applicable trade agreements. Consulting services are defined as the provision of expertise or strategic advice that is presented for consideration and decision making.

The value of a procurement will not be reduced (e.g., dividing a single procurement into multiple procurements) in order to circumvent competitive procurement thresholds.

Goods, Non-Consulting Services and Construction	
Procurement Method	Procurement Value
Minimum one advertised or verbal quote	Up to but not including \$5,000
Minimum two written quotes	\$5,000 up to but not including \$25,000
Invitational competitive procurement (minimum of three suppliers are invited to submit a bid)	\$25,000 up to but not including \$100,000
Open competitive process	\$100,000 or more

Consulting Services	
Procurement Method	Procurement Value
Invitational Competitive	Up to but not including \$100,000
Open Competitive	\$100,000 or more

Non-Competitive Procurement

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

Skylark may utilize non-competitive procurement only in situations outlined in the exemption, exceptions, or non-application clauses of the Agreement on Internal Trade (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.

PROCEDURES:

The following are procedural requirements for procurement and contract management in accordance with the directive:

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.

5 – Supplier Pre-Qualification

The Request for Supplier Qualification (RFSQ) enables Skylark 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. The purpose of this process is to reduce subsequent effort devoted to the competitive process (i.e. bid preparation on the part of the suppliers and evaluation on the part of the organization), as detailed further:

- a) An RFSQ can be used to understand which potential proponents have the capabilities that the organization requires, as the first stage in a two-stage solicitation (followed by a Request for the Proposal), whereby only pre-qualified suppliers will be invited to respond to the actual competition. This can make the number of responses and evaluation process more manageable for evaluators, while allowing unqualified proponent to avoid further effort and expense of preparing a complete proposal;
- b) An RFSQ can be used to pre-qualify suppliers who are interested in supplying materials or services in future if, as and when requested. The typical result of this procedure is a Vendor of Record (VOR) or a preferred suppliers list.

Skylark will ensure that the terms and conditions built into the RFSQ contain specific language to disclaim any obligation on the part of Skylark to actually call on any supplier to provide goods or services as a result of pre-qualification. The intent is that no bid or performance contract will be formed between Skylark and the pre-qualified suppliers as part of this process.

Information Gathering Mechanisms will be used as follows:

Information Required	RFI	RFEI	RFSQ
General Supplier or Production Information	X		
Information on Supplier Interest in Opportunity		X	
Information on Supplier Capability/Qualifications		X	
Pre-Qualified Suppliers' List Desired			X

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.

Competitive Documents

For an open competitive process, Skylark will develop competitive documents that can be provided to potential proponents to explain the organization's requirements. They will include a description of the needed goods, services, or construction in a generic and/or functional terms specific to the business needs that the good or service will serve in all procurement documents. When the use of non-generic and/or non-functional terms is appropriate, the specifications must deal with performance requirements and exclude all features that could unfairly confer an advantage to certain suppliers. For information technology (IT) procurements, the organizations may express requirements in terms of corporate or organization IT standards as an alternative to functional terms.

In addition, the documents will include the following points which are to be covered in the RFP Template:

- a) Full disclosure of the evaluation criteria, process, and methodology to be used in assessing submissions. The competitive documents should clearly identify the requirements of the procurement; the criteria that will be used in the evaluation of bids; and the methods of weighting and evaluating the criteria. The competitive documents must also identify those criteria that are considered mandatory and any technical standards that need to be met;
- b) The name, telephone number and location of the person to contact for additional information on the procurement documents, and a statement that suppliers who go outside of this contact person may be disqualified;
- c) Conditions that must be met before obtaining procurement documents such as conflict-of-interest declarations, confidentiality agreements, and non-disclosure agreements, if appropriate;
- d) The address, date, and time limit for submitting bids to procurement documents. Bids received after the closing date and time will be returned unopened;
- e) The process, date and time limit for the submission of questions and bids on the procurement documents;

- f) The time and place of the opening of the bids in the event of public opening;
- g) The submission rules and competitive clauses to be followed, which may include bid format, language, inclusion of an executive summary, number of copies required, attendance at a bidder' conference and any additional rules to be followed in order to be considered a compliant bid;
- h) A draft copy of the contract to be signed in the event of an award of the procurement;
- i) A request for list of any subcontractors to be used to complete the procurement;
- j) The period of irrevocability of bids where bids cannot be withdrawn (typically 120 days from the closure of the competitive process);
- k) For goods, services, and construction valued at \$100,000 or more, a statement that the procurement is subject to Ontario's trade agreements; and
- l) Notice that any confidential information supplied to the Organizations may be disclosed by the Organizations where it is obligated to do so under FIPPA, by an order of a court of tribunal or otherwise required at law.

Communications during Competition

The competition process begins when the competitive procurement documents are issued and end on the closing date; this is commonly referred to as the "blackout period." The manager/director leading the procurement is responsible for managing the process through to contract award.

During the blackout period in all competition situations, it is imperative that all communication with suppliers involved in the process occur formally, through the contact person identified in the competitive documents.

During the competitive period, the competitive procurement documents may be clarified or modified through the use of one or two types of responses:

- An addendum response; or
- A question-and-answer (Q&A) response.

Addenda and Q&A's are posted in the same manner as the competitive documents were advertised to the market and therefore shall be made available to all potential proponents. Standards for these and other communication mechanisms are included in the subsections that follow.

Addendum response: An addendum is prepared if modifications to the competitive procurement documents are necessary (e.g., amending, adding, or deleting information due to errors, conflicts, or deficiencies in the documents). An addendum may modify the documents by:

- Inserting new, revised, or repaginated pages;

- Inserting new or revised drawings;
- Deleting pages or drawings; and/or
- Inserting pages that were inadvertently omitted from the posted competitive procurement documents.

All Addenda will be issued at least seven days prior to the closing date. If an addendum is issued within seven days of the closing date, the date will be extended accordingly.

Question-and-answer responses: A Q&A response is prepared if clarification of the RFP documents is required without the need to modify the posted competitive procurement documents. Any answer that results in a change to any aspect of the competitive procurement documents must be addressed by making corresponding modifications to the documents by an addendum. Generally, questions are requested to be submitted no less than seven days prior to the closing date, although questions may be considered after that and if warranted; consideration may be given to extending the closing date, taking into account the project schedule. The objective is to ensure that all proponents receive as much relevant information as possible.

7 – Timelines for posting Competitive Procurements

Skylark will give potential proponents enough time to prepare a sufficient response for the competitive process. The goal of the competitive process should be to receive the highest number of quality bids possible, so as to maximize the organization's ability to achieve better value for money.

Skylark will provide suppliers a minimum response time of 15 calendar days for procurements valued at \$100,000 or more.

Skylark must consider providing suppliers a minimum response time of 30 calendar days for procurements of high complexity, risk, and/or dollar value.

8 – Bid Receipt

Skylark will ensure that the closing date is set on a normal working date (Monday to Friday, excluding provincial and national holidays). Submissions that are delivered after the closing times will NOT be considered and must be returned **unopened**.

9 – Evaluation Criteria

Every competitive process will establish evaluation criteria. The evaluation criteria will be used by the organization to decide which bid should be selected from the competitive process.

In evaluating bids, Skylark may take into account not only the submitted price but also quality, quantity, transition costs, delivery, servicing, environmental considerations, the capacity of the supplier to meet the requirements of procurement, experience, financial capacity of the supplier, and any other criteria directly related to the procurement.

For IT procurements, Skylark must assess conversion costs, if appropriate. In establishing the evaluation criteria and weighting of conversion costs, Skylark will not unduly favour an incumbent supplier or unduly disadvantage non-incumbent suppliers.

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 Non-discrimination of the Directive described later in this policy. The evaluation criteria are to be altered only by means of addendum to the competitive procurement documents.

Skylark may request suppliers to provide alternative strategies or solutions as a part of their submission. Skylark 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. Typically, an evaluation process comprises three components: mandatory requirements, rated requirements, and price/cost. Skylark must ensure that it does not request information from suppliers that will not be evaluated or affect the evaluation process.

10 – Evaluation Process Disclosure

The first step in the evaluation process is to ascertain whether submissions are compliant. Submissions may be considered to be materially compliant, but certain clarifications may be sought. Once the compliance submissions have been identified, Skylark will proceed with the balance of the evaluation process.

Competitive procurement documents must fully disclose the evaluation methodology and process to be used in assessing submissions, including the method of resolving tie scores. Tie-break criteria are also subject to the rules of non-discrimination.

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

A full disclosure of the evaluation methodology and process must include the following:

- A clear articulation of all mandatory requirements. Skylark must indicate if the mandatory requirements will be assessed on a pass/fail basis and indicate how suppliers achieve a passing grade. Where a supplier is disqualified for non-compliance with a mandatory requirement, no further evaluation should take place;
- All weights, including sub-weights, for rated requirements. Where a supplier fails to meet a stated minimum score for rated requirements no further evaluation should take place;
- Description of any short-listing processes, including any minimum rated score requirements;

- The role and weighting, if applicable, of reference checks, oral interviews, and demonstration; and
- Descriptions of the price/cost evaluation methodology, including the use of scenarios in the evaluation process, to determine costs for specific volumes and/or service levels. The evaluation of price/cost must be undertaken only after completion of the evaluation of the mandatory requirements and any other related criteria for all bids.

11 – Evaluation Team

Every competitive process will have an evaluation team that will be responsible for reviewing all the compliant bids and scoring each of those bids. The evaluation team may be different for each competitive process executed by Skylark, depending on the expertise required to help make the decision. The following will be considered:

- a) Evaluation team members will be selected and their participation confirmed before the competitive documents have been posted. Ideally, the evaluation team members will have been included in the development of the evaluation criteria, and weighting. Team members may include clinicians, supply chain experts, subject-matter experts and financial experts. Evaluation teams will be composed of appropriate members to ensure that a proper evaluation is conducted;
- b) An Evaluation Team Lead will be selected by the evaluation team members to be responsible for coordinating the evaluation process;
- c) A representative of the procurement function will participate in the oversight of the process, if not participating as part of the evaluation team.

Evaluation team members are 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. Skylark will require team members to sign a conflict-of-interest declaration and non-disclosure of confidential information agreement.

12 – Evaluation Matrix

Skylark will ensure that each member of the evaluation team has completed an evaluation matrix rating each of the proponents. Records of evaluation scores must be retained for audit purposes. Evaluators are aware that everything they say or document must be fair, factual, fully defensible, and may be subject to public scrutiny.

13 – Winning Bid

Skylark must select only the highest ranked submission(s) that have met all mandatory requirements set out in the related procurement document.

Skylark is entitled to ask proponents for clarification on their bid as long as it does not change their bid in any way.

Where bids are received in response to a solicitation but exceed Skylark's budget, are not responsive to the requirement, or do not represent fair market value, a revised solicitation can be issued in an effort to obtain an acceptable bid.

If no bids are acceptable and it is not reasonable to go through any other method, Skylark may choose to negotiate directly with a chosen supplier.

Any proponent whose submission is rejected during the evaluation process will be notified of the rejection in writing as soon as practicable after completion of the evaluation. With the exception of any pricing that was made publicly available at the time of a public opening, all submission evaluation details will be kept confidential.

14 – Non-Discrimination

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

15 – Executing the Contract

Following the procurement process and the selection of a contract type, a signed written contract will be established.

The agreement between Skylark and the successful supplier will be defined formally in a signed written contract before the provision of goods, services, or construction commences. Where an immediate need exists for goods or services, Skylark and the supplier are unable to finalize the contract as described above, an interim purchase order may be used. The justification of such a decision must be documented and approved by the appropriate authority.

A number of types of contracts may be used by Skylark:

- a) Fixed price: A fixed-price contract is a contract that has a set fee for a specific scope of work to be completed, which can include the completion of a specific deliverable or deliverables;
- b) Time and materials: A time and materials contract identifies work to be paid based on units of time spend on the procurement. These time units are typically in the form of daily or hourly rates for the amount of time and materials used by the resource assigned by the supplier. If the Organizations don't have a well defined scope of work, a time and materials contract may be the only option;
- c) Cost reimbursable: A cost-reimbursable contract is a contract where the buying Organization agrees to reimburse all the costs incurred by the supplier in the completion of the work identified. Typically the buying Organizations will pay an additional fee on top of those costs to represent the suppliers' profit. This additional fee can be calculated as a percentage of the cost incurred or as a flat fee on top of the costs incurred.

A combination of the contract types above may also be used.

16 – Establishing the Contract

The contract must be finalized using the form of agreement/contract that was released with the procurement document.

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

17 – Termination Clauses

All contracts will include appropriate cancellation or termination clauses and Skylark will seek appropriate legal advice on the development of these clauses when necessary. When conducting complex procurement, Skylark should consider, as appropriate, the use of contract clauses that permit cancellation or termination at critical project life-cycle stages.

18 – Term of Agreement Modifications

The term of the agreement and any options to extend the agreement will 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 the contract start and end dates. Extensions of the term of agreement beyond what is set out in the procurement document are considered non-competitive procurements and Skylark will seek appropriate approval authority prior to proceeding.

19 – Contract Award Notification

Once the preferred supplier has been selected and the contract has been awarded and signed, Skylark will notify all proponents that a contract has been signed and the competitive process is complete.

For purchases valued at \$100,000 or greater, Skylark will post, in the same manner as the procurement documents were posted, the name(s) of the successful supplier(s) or may send out a letter to the supplier indicating this information. Contract award notification will occur only after the agreement between the successful supplier and Skylark has been executed. The contract award notification will include the agreement start and end dates, including any options for extension.

20 – Supplier Debriefing

For purchases valued at \$100,000 or greater Skylark will inform all suppliers who participated in the procurement process of their entitlement to a debriefing.

The details of the vendor debrief will be included in the competitive documents, including the process for booking debrief sessions at the conclusion of the procurement process. Skylark will allow suppliers 60 calendar days following the dates of the contract award notification to respond.

21 – Non-Competitive Procurement

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

Skylark may utilize non-competitive procurement only in situations outlined in the exemption, exception, or non-application clauses of the AIT or other trade agreements. (See Appendix I) Prior to commencement of non-competitive procurement, supporting documentation must be completed and approved by an appropriate authority within Skylark.

For procurements that do not warrant competition in accordance with the conditions of this Procedure, may still be put through a competitive process or an invitational competitive process to increase the chances of achieving the greatest value for money. Another option will be to use a Vendor of Record (VOR) or preferred suppliers list.

Exemptions from the Competitive Process

In certain unique circumstances, Skylark will not have the ability to go through a competitive process for procurement activity. There are two main types of direct awards (see Appendix I):

- a) Single Sourcing is the use of a non-competitive procurement process to acquire goods, services, or construction from a specific supplier even though there may be more than one supplier capable of delivering the same goods, services, or construction;
- b) Sole Sourcing means the use of a non-competitive procurement process to acquire goods or services where there is only one available supplier for the source of the goods or service.

Non-Compliance Procurement Documentation

When Skylark bypasses the competitive process for any of the situations identified above, formal documentation must be completed to support and justify the decision. This document 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.

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, Skylark should include a dispute resolution process in their contracts.

For services, Skylark 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.

23 – Procurement Records Retention

Skylark will retain all procurement documents, as well as any other pertinent information for reporting and auditing purposes for a period of seven years and will be in recoverable form if requested.

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

24 – Conflict of Interest

Skylark must monitor any conflict of interest that may arise as a result of the Skylark's, advisors', external consultants', or suppliers' involvement with the Supply Chain Activities. Individuals involved with the Supply Chain Activities must declare actual or potential conflict of interest. Where a conflict of interest arises, it must be evaluated and an appropriate mitigating action must be taken.

Skylark will require any individual involved in supply chain-related activities to declare all actual or potential conflicts of interest.

Suppliers

Since Skylark is involved in procurement activities with suppliers the following provisions are in place:

- a) Define conflict of interest to include situations or circumstances that could give a supplier an unfair advantage during a procurement process or compromise the ability of a supplier to perform its obligations under the agreement;
- b) Reserve the right of the organization to solely determine whether any situation or circumstance constitutes a conflict of interest;
- c) Reserve the right of the organization to disqualify prospective suppliers from a procurement process due to a conflict of interest;
- d) Require prospective suppliers participating in a procurement process to declare any actual or potential conflict of interest;

- e) Require suppliers to avoid any conflict of interest during the performance of their contractual obligations for the organization;
- f) Require suppliers to disclose any actual or potential conflict of interest arising during the performance of an agreement;
- g) Reserve the right of the organization to prescribe the manner in which a supplier should resolve a conflict of interest;
- h) Allow the organization to terminate an agreement where a supplier fails to disclose any actual or potential conflict of interest or fails to resolve its conflict of interest as directed by the organization; and
- i) Allow the organization to terminate an agreement where a conflict of interest cannot be resolved.

Consultants

Skylark is aware of the conflict of interest created when a consulting organization is involved in the development of the competitive documents. Skylark insists on documented agreements that any consultant involved in developing the competitive documents cannot be involved in the creation of the response to those competitive documents.

25 – Bid Dispute Resolution

Skylark will communicate the bid protest procedures for suppliers in all competitive and procurement documents to ensure that any dispute is handled in an ethical, fair, reasonable, and timely fashion. Skylark will ensure that the process is compliant with the bid protest procedures as set out in the AIT.

Skylark will include a dispute resolution process in each contract with the chosen supplier to manage disputes throughout the life of the contract. Contracts with international suppliers will state that arbitration will be in Canada.

Appendix I – List of Exceptions Agreement on Internal Trade, Single and Sole Sourcing

1.1. *Noncompetitive Procurement*

Skylark should employ competitive procurement processes to achieve optimum value for money. It is recognized, however, that special circumstances may require Skylark to use noncompetitive procurement. Skylark may use non-competitive procurement under the circumstances outlined in this section.

1.2. *Non-Application of Trade Agreements*

Where a non-application clause exists under the Agreement on Internal Trade (AIT) or other trade agreement, Organizations may apply this clause as basis for conducting noncompetitive procurement. An Organization asserting that procurement is subject to a non-application clause under a trade agreement must formally establish applicability of this clause.

- The abovementioned non-application clauses include:
- Procurement of goods intended for resale to the public;
- Contracts with a public body or a nonprofit 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 interprovincial movement of which is restricted by laws not inconsistent with the 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.

1.3. Exceptions from Trade Agreements

Where an exception clause exists under the Agreement on Internal Trade (AIT) or other trade agreement, Organizations may apply this clause as basis for conducting noncompetitive procurement.

An Organization asserting that procurement is subject to an exception clause under a trade agreement must formally establish applicability of this clause.

1.4. Single Sourcing of Goods, Non-Consulting, and Consulting Services

Organizations may conduct noncompetitive procurement of goods and non-consulting Services in the circumstances listed below (also known as single source situations), provided that they do not do so for the purposes of avoiding competition between suppliers or in order to discriminate against suppliers:

- Where an unforeseeable situation of urgency exists and the goods or services cannot be obtained in time by means of open procurement procedures.

Failure to plan and allow sufficient time for a competitive procurement process does not constitute an unforeseeable situation of urgency.

- Where goods or services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest;
- Where a contract is to be awarded under a cooperation agreement that is financed, in whole or in part, by an international cooperation organization, only to the extent that the agreement between the entity and the organization includes rules for awarding contracts that differ from the obligations set out in the Directive;
- Where construction materials are to be purchased and it can be demonstrated that transportation costs or technical considerations impose geographic limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt, compound and premixed concrete for use in the construction or repair of roads;
- Where compliance with the open tendering provisions set out in the Directive would interfere with the entities' ability to maintain security or order or to protect human, animal or plant life or health; and

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

1.5. Sole Sourcing of Goods, Non-Consulting, and Consulting Services

Where only one supplier is able to meet the requirements of a procurement, Organizations may conduct noncompetitive procurement in the circumstances listed below (also known as sole source situations) provided that they do not do so for the purposes of avoiding competition between suppliers or in order to discriminate against suppliers:

- To ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licenses, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative;
- Where there is an absence of competition for technical reasons and the goods or services can be supplied only by a particular supplier and no alternative or substitute exists;
- For the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly;
- For the purchase of goods on a commodity market;
- For work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;
- For work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work;
- For a contract to be awarded to the winner of a design contest;
- For the procurement of a prototype of a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;
- For the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
- For the procurement of original works of art;
- For the procurement of subscriptions to newspapers, magazines or other periodicals;
and
- For the procurement of real property.

Related Material

Broader Public Sector – Procurement Directive (July 2011)

http://www.fin.gov.on.ca/en/bpssupplychain/documents/bps_procurement_directive.pdf

Agreement on Internal Trade (AIT) – Consolidated Version (2011)

http://www.ait-aci.ca/en/ait/ait_en.pdf

Broader Public Sector Procurement Directive Implementation Guidebook,

http://www.fin.gov.on.ca/en/bpssupplychain/documents/bps_procurement_implementation.pdf