

<b>SECTION:</b> Finance and Administration	<b>EFFECTIVE DATE:</b> May 2012	<b>Approved by</b>  Chief Executive Officer
<b>DEPARTMENT:</b> Finance	<b>DATE LAST REVISED:</b> October 2024	

## **POLICY STATEMENT:**

Kerry's Place Autism Services (Kerry's Place) falls under the Broader Public Sector (BPS) Act Procurement Directive because it receives more than 10 million per fiscal year collectively from government ministries. Kerry's Places' objective is to ensure compliance with the BPS Procurement Guideline including ethical, efficient and accountable sourcing, contracting and purchasing activities that result in value for money purchases.

### **Purpose:**

The purpose of the policy is:

- To ensure that goods and services, including construction, consulting services, and information technology are acquired by Kerry's Place through a process that is open, fair, and transparent;
- To outline responsibilities throughout each stage of the procurement process; and
- To ensure that procurement processes are managed consistently.

### **Scope:**

The Procurement Policy and Procedures govern how Kerry's Place conducts sourcing, contracting and purchasing activities, including approval segregation and limits, competitive and non-competitive procurement, purchasing, contract awarding, conflict of interest and bid protest procedures.

The Procurement Policy and Procedure applies to all individuals involved with purchasing goods, services, consulting services, construction or capital on behalf of Kerry's Place. Procurement Policies also apply to all Kerry's Place purchasing activities including those funded by private donations, fundraising, and fee for service.

In an effort to make effective use of resources, Kerry's Place will take advantage of competitive bidding processes completed by strategic partners including group purchasing organizations, and the Ontario Government. Kerry's Place will also review all Government vendors of record for suitable contract matches.

<http://www.doingbusiness.mgs.gov.on.ca/>

Kerry's Place will look to qualified vendors first for contracts. If, after review of these organizations, no one has initiated the RFP process then we will go out to RFQ/RFP for that particular item independently.

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**Definitions:**

- “Accountability” means the obligation of an employee, agent or other person to answer for or be accountable for, work, action or failure to act following delegated authority.
- “Agreement” means the formal written document that will be entered into at the end of the procurement process.
- “Approval Authority” means the authority delegated by Kerry’s Place to a person designated to occupy a position to approve on its behalf one or more procurement functions within the plan- to-pay cycle up to specified dollar limits subject to the applicable legislation, regulations and procedures in effect at such time.
- “Award” means the notification to a proponent of acceptance of a proposal, quotation or tender that brings a contract into existence.
- “Bid” means a proposal, quotation or tender submitted in response to a solicitation from a contracting authority. A bid covers the response to any of the three principal methods of soliciting bids, i.e., Request for Proposal, Request for Tender and Request for Quotation.
- “Bid Protest” means a dispute raised against the methods employed or decisions made by a contracting authority in the administration of a proposal, tender, or quotation process.
- “Chief Executive Officer” means the most senior corporate officer reporting to the Board of Directors.
- “Competitive Procurement” means a set of procedures for developing a procurement contract through a bidding or proposal process. The intent is to solicit fair, impartial, competitive bids.
- “Conflict of Interest” means a situation in which financial or other personal considerations have the potential to compromise or bias professional judgment and objectivity. An apparent conflict of interest is one in which a reasonable person would think that the professional’s judgment is likely to be compromised.
- “Construction” means construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, the supply of products and materials, the supply of equipment and machinery if they are included in and incidental to the construction, and the installation and repair of fixtures of a building, structure or other civil engineering or architectural work, but does not include professional consulting services related to the construction contract unless they are included in the procurement.
- “Consultant” means a person or entity that under an agreement, other than an employment agreement, provides expert or strategic advice and related services for consideration and decision-making.

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- “Consulting Services” means the provision of expertise or strategic advice that is presented for consideration and decision-making.
- “Contract” means an obligation, such as an accepted offer, between competent parties upon a legal consideration, to do or abstain from doing some act. It is essential to the creation of a contract that the parties intend that their agreement shall have legal consequences and be legally enforceable. The essential elements of a contract are an offer and an acceptance of that offer; the capacity of the parties to contract; consideration to support the contract; a mutual identity of consent or consensus ad idem; legality of purpose; and sufficient certainty of terms.
- “Electronic Tendering System” means a computer-based system that provides suppliers with access to information related to open competitive procurements.
- “Evaluation Criteria” means a benchmark, standard or yardstick against which accomplishment, conformance, performance and suitability of an individual, alternative, activity, product or plan is measured to select the best supplier through a competitive process. Criteria may be qualitative or quantitative in nature.
- “Evaluation Matrix” means a tool allowing the evaluation team to rate supplier proposals based on multiple pre-defined evaluation criteria.
- “Evaluation Team” means a group of individuals designated/responsible to make award recommendation. The evaluation team would typically include subject matter expert(s) from within Kerry’s Place and, when required, expertise from external business partners or other sources. Each member participates to provide business, legal, technical and financial input.
- “Goods” means moveable property (including the costs of installing, operating, maintaining or manufacturing such moveable property) including raw materials, products, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a general construction contract.
- “Goods and Services/Goods or Services” means all goods and/or services including construction, consulting services and information technology.
- “Information Technology” means the equipment, software, services and processes used to create, store, process, communicate and manage information.
- “Invitational Competitive Procurement” means any form of requesting a minimum of three (3) qualified suppliers to submit a written proposal in response to the defined requirements outlined by an individual/organization.
- “Members” means all members of the board of directors, management, and employees of Kerry’s Place, or their equivalent.
- “Non-discrimination” means fairness in treating suppliers and awarding contracts without prejudice, discrimination or preferred treatment.

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- “Offer” means a promise or a proposal made by one party to another, intending the same to create a legal relationship upon the acceptance of the offer by the other party.
- “Procurement” means acquisition by any means, including by purchase, rental, lease or conditional sale, of goods or services.
- “Procurement Card (P-Card)” means a credit card program primarily used for low-cost, non- inventory, non-capital items, such as office supplies. The card allows procurement or field
- Employees to obtain goods and services without going through the requisition and authorization procedure. P-cards may be set up to restrict use to specific purchases with predefined suppliers or stores, and offer central billings.
- “Procurement Policies and Procedures (PPP)” means the framework and mandatory requirements that governs how Kerry’s Place conducts sourcing, contracting and purchasing activities, including approval segregation and limits, competitive and non-competitive procurement, conflict of interest and contract awarding.
- “Procurement Value” means the estimated total financial commitment resulting from procurement, taking into account optional extensions.
- “Purchase Order (PO)” means a written offer made by a purchaser to a supplier formally stating the terms and conditions of a proposed transaction.
- “Request for Expressions of Interest (RFEI)” means a document used to gather information on supplier interest in an opportunity or information on supplier capabilities/qualifications. This mechanism may be used when a BPS organization wishes to gain a better understanding of the capacity of the supplier community to provide the services or solutions needed. A response to a RFEI must not pre-qualify a potential supplier and must not influence their chances of being the successful proponent on any subsequent opportunity.
- “Request for Information (RFI)” means a document issued to potential suppliers to gather general supplier, service or product information. It is a procurement procedure whereby suppliers are provided with a general or preliminary description of a problem or need and are requested to provide information or advice about how to better define the problem or need, or alternative solutions. A response to an RFI must not pre-qualify a potential supplier and must not influence their chances of being the successful proponent on any subsequent opportunity.
- “Request for Proposal (RFP)” means a document used to request suppliers to supply solutions for the delivery of complex products or services or to provide alternative options or solutions. It is a process that uses predefined evaluation criteria in which price is not the only factor.
- “Request for Supplier Qualifications (RFSQ)” means a document used to gather information on supplier capabilities and qualifications, with the intention of creating a list of pre-qualified suppliers. This mechanism may be used either to identify qualified

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candidates in advance of expected future competitions or to narrow the field for an immediate need. Kerry's Place must ensure that the terms and conditions built into the RFSQ contain specific language that disclaims any obligation on the part of Kerry's Place to call on any supplier to provide goods or services as a result of the pre-qualification.

- “Request for Tender (RFT)”, a competitive procurement process for obtaining competitive price proposals based on precisely defined requirements for which a clear or single solution exists.
- “Requisition” means a formal request to obtain goods or services made within Kerry's Place generally from the end-user to the procurement department.
- “Segregation of Duties” means a method of process control to manage conflict of interest, the appearance of conflict of interest, and errors or fraud. It restricts the amount of power held by any one individual. It puts a barrier in place to prevent errors or fraud that may be perpetrated by one individual.
- “Services” means intangible products that do not have a physical presence. No transfer of possession or ownership takes place when services are sold, and they (1) cannot be stored or transported, (2) are instantly perishable, and (3) come into existence at the time they are bought and consumed.
- “Single Sourcing” is the procurement of a good or service from a particular vendor rather than through the solicitation of bids from other vendors who can provide the same item.
- “Sole Sourcing” is the procurement of a good or service that is unique to a particular vendor and cannot be obtained from another source.
- “Sub-Contractor” is an individual or organization delegating specified tasks, or sub-projects, of a specific project for another organization through contractual agreements.
- “Supplier/Vendor” means any person or organization that, based on an assessment of that person's or organization's financial, technical and commercial capacity is capable of fulfilling the requirements of procurement.
- “Supply Chain Activities” means all activities whether directly or indirectly related to Kerry's Place's plan, source, procure, move, and pay processes.
- “Supplier Debriefing” means a practice of informing a supplier why their bid was not selected upon completion of the contract award process.
- “Trade Agreements” means any applicable trade agreement to which Ontario is a signatory.
- “Vendor or Record (VOR)” arrangement means a procurements arrangement, typically established through an RFP, that authorizes one or more qualified vendors to provide goods/services for a defined period of terms and conditions, including pricing, as set out in the VOR agreement.

**Roles and Responsibilities:**

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**Employee:**

- Follow procedures for procurement.

**Manager/Director:**

- Communicate procedures for procurement to employees.

**Finance Department:**

- Support employees and managers for procurement procedures.

**Communication:**

Managers will communicate the information in this policy during team meetings.

**Standard/Procedure:**

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

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

**Principles:**

There are five key principles that allow Kerry's Place to achieve value for money while following a procurement process that is fair and transparent to all stakeholders:

- Accountability**  
Kerry's Place must be accountable for the results of its procurement decisions and the appropriateness of the processes.
- Transparency**  
Kerry's Place must be transparent to all stakeholders. Wherever possible, stakeholders must have equal access to information on procurement opportunities, processes and results.
- Value for Money**  
Kerry's Place must maximize the value it receives through its purchasing activities. A value-for-money approach aims to deliver goods and services at the optimum total lifecycle cost.
- Quality Service Delivery**  
All front-line services provided by Kerry's Place must receive the right product, at the right time, in the right place.

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- Process Standardization**

Standardized processes remove inefficiencies and create a level playing field.

**Value of Procurement:**

When determining the value of procurement for approval purposes Kerry's Place should not take into consideration applicable sales taxes.

Projects, procurements or agreements must not be subdivided to avoid any requirements of this document regarding competition, approvals or reporting.

Kerry's Place must comply with the requirements set forth in this Document.

**Mandatory Requirement #1: Segregation of Duties**

Kerry's Place separates at least three of the five functional procurement roles: Requisition, Budgeting, Commitment, Receipt and Payment. Responsibilities for these roles must lie with different departments or, at a minimum, with different individuals. Where it is not feasible to segregate these roles, adequate internal controls must be put in place.

Roles	Explanation	Who
Requisition	Authorize the purchasing department to place an order	End user requesting the product or service
Budget	Authorize that funding is available to cover the cost of the order	Departmental Manager/Finance Business Manager
Commitment	Authorize release of the order to the vendor under agreed upon contract terms	Purchasing role in the Finance department
Receipt	Authorize that the order was physically received, correct and complete	Individual receiving the goods
Payment	Authorize the release of payment to the vendor	Accounts payable

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### **Mandatory Requirement #2: Approval Authority**

Kerry's Place has established an approval authority schedule (AAS) (Approval Authority Schedule Policy) for procurement of goods and services. The AAS identifies, for each of the functional procurement roles, authorities that are allowed to approve procurements for different dollar thresholds. The AAS is approved by the board of directors of Kerry's Place.

Prior to commencement, any procurement of goods and services must be approved by an appropriate authority in accordance with the AAS of Kerry's Place.

#### **Goods and non-consulting services**

Prior to commencement, any procurement of goods and non-consulting services must be approved by an appropriate authority in accordance with the AAS of Kerry's Place.

#### **Consulting services**

Prior to commencement, any procurement of consulting services must be approved by an appropriate authority in accordance with the AAS of Kerry's.

#### Procurement Approval Authority Schedule (AAS) for Consulting Services

Procurement Method	Procurement Value	Approval Authority
Invitational Competitive (minimum of 3 suppliers are invited to submit a bid.)	\$0 up to but not including \$100,000	Kerry's Place AAS
Open Competitive	Any value	Kerry's Place AAS
Exemption Based Only	\$0 up to but not including \$1,000,000	CEO
Exemption Based Only	\$1,000,000 or more	Board of Directors or equivalent

When appropriate approvals are received for an Exemption Based procurement of consulting services, subsequent procurement activities should be consistent with Kerry's Place's segregation of duties.

Kerry's Place must not reduce the overall value of procurement (e.g., dividing a single procurement into multiple procurements) in order to circumvent the approval requirements of the Kerry's Place AAS or the Procurement AAS for Consulting Services.

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**Mandatory Requirement #3: Competitive Procurement Thresholds**

Kerry's Place must conduct an open competitive procurement process where the estimated value of procurement of goods or services is \$121,200 or more. The exemptions must be in accordance with the applicable trade agreements.

**Kerry's Place must competitively procure consulting services irrespective of value. The exception must be in accordance with the applicable trade agreements.**

Goods, Non-Consulting Services and Construction		
Total Procurement Value	Means of Procurement	Recommended/Required
\$0 up to but not including \$10,000	Three quotes	Recommended
\$10,000 up to but not including \$121,200	Invitational competitive procurement (minimum of three suppliers are invited to submit a bid)	Required
\$121,200 or more	Open competitive process	Required
Consulting Services		
Total Procurement Value	Means of Procurement	Recommended/Required
\$0 up to but not including \$121,200	Invitational or open competitive process (minimum of three suppliers are invited to submit a bid)	Required
\$121,200 or more	Open competitive process	Required

Open Competitive Process refers a controlled bidding process that is fair and open (posted in a public forum for qualified organizations to bid. Kerry's Place posts on MERX.com)

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Kerry's Place must not reduce the overall value of procurement (e.g., dividing a single procurement into multiple procurements) in order to circumvent competitive procurement thresholds.

**Mandatory Requirement #4: Information Gathering**

Where results of informal supplier or product research are insufficient, formal processes such as a Request for Information (RFI) or Request for Expression of Interest (RFEI) may be used if warranted, taking into consideration the time and effort required to conduct them.

A response to RFI or RFEI must not be used to pre-qualify a potential supplier and must not influence the chances of the participating suppliers from becoming the successful proponent in any subsequent opportunity.

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

The Request for Supplier Qualification (RFSQ) enables Kerry's Place to gather information about supplier capabilities and qualifications in order to pre-qualify suppliers for an immediate product or service need or to identify qualified candidates in advance of expected future competitions.

Terms and conditions of the RFSQ document must contain language that disclaims any obligation of Kerry's Place to call on any supplier to provide goods or services as a result of pre-qualification.

**Mandatory Requirement #6: Posting Competitive Procurement Documents**

Calls for open competitive procurements must be made through an electronic tendering system that is readily accessible by all Canadian suppliers. Kerry's Place utilizes MERX and/or BIDDINGO.

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

Kerry's Place must provide suppliers a minimum response time of 15 calendar days for procurement of goods and services valued at \$121,200 or more.

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

**Mandatory Requirement #8: Bid Receipt**

Bid submission date and closing time must be clearly stated in competitive procurement documents. Kerry's Place must set the closing date of a competitive procurement process on a normal working day (Monday to Friday, excluding provincial and national holidays).

Submissions that are delivered after the closing time must be returned unopened.

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**Mandatory Requirement #9: Evaluation Criteria**

Evaluation criteria must be developed, reviewed and approved by the appropriate level of delegated authority in Mandatory Requirement #2 of this document 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 BPS Procurement Directive.

The evaluation criteria are to be altered only by means of addendum to the competitive procurement documents.

Kerry's Place may request suppliers to provide alternative strategies or solutions as a part of their submission.

Kerry's Place must establish criteria to evaluate alternative strategies or solutions prior to commencement of the competitive procurement process.

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

Competitive procurement documents must fully disclose the evaluation methodology and process to be used in assessing submissions, including the method of resolving tie score.

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

**Mandatory Requirement #11: Evaluation Team**

Competitive procurement processes require an evaluation team responsible for reviewing and rating the compliant bids.

Evaluation team members must be made aware of the restrictions related to utilization and distribution of confidential and commercially sensitive information collected through the competitive procurement process and refrain from engaging in activities that may create or appear to create a conflict of interest.

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Evaluation team members must sign a conflict-of-interest declaration and non-disclosure of confidential information agreement.

**Mandatory Requirement #12: Evaluation Matrix**

Each evaluation team member must complete an evaluation matrix, rating each of the submissions. Records of evaluation scores must be retained for audit purposes.

Evaluators must ensure that everything they say or write about submissions is fair, factual, and fully defensible.

**Mandatory Requirement #13: Winning Bid**

The submission that receives the highest evaluation score and meets all mandatory requirements set out in the competitive procurement document must be declared the winning bid.

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

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

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

The agreement between Kerry's Place and the successful supplier must be formally defined in a signed written contract before the provision of supplying goods or services commences.

Where an immediate need exists for goods or services, and Kerry's Place and the supplier are unable to finalize the contract as described above, an interim purchase order may be used. The justification of such decision must be documented and approved by the appropriate level of delegated.

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

If a form of agreement was released with the procurement documents that form of agreement must be used to finalize the contract.

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

**Mandatory Requirement #17: Termination Clauses**

All contracts must include appropriate cancellation or termination clauses that have been developed with the benefit of legal advice.

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When conducting complex procurements, Kerry's Place should consider, as appropriate, the use of contract clauses that permit cancellation or termination at critical project life-cycle stages.

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

The term of the agreement and any options to extend the agreement must be set out in the competitive procurement documents. An approval by the appropriate level of delegated authority in section Mandatory Requirement #2 of this document must be obtained before executing any modifications to the term of agreement.

Extending the term of agreement beyond that set out in the competitive procurement document amounts to non-competitive procurement where the extension affects the value and/or stated deliverables of procurement.

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

For procurements valued at \$121,200 or more, Kerry's Place must post, in the same manner as the procurement documents were posted, a contract award notification. The notification must be posted after the agreement between the successful supplier and Kerry's Place was executed. Contract award notification must list the name of the successful supplier, agreement start and end dates, and any extension options.

**Mandatory Requirement #20: Supplier Debriefing**

For procurements valued at \$121,200 or more, Kerry's Place must inform all unsuccessful suppliers about their entitlement to a debriefing.

Kerry's Place must allow unsuccessful suppliers 60 calendar days following the date of the contract award notification to request a debriefing.

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

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

Kerry's Place may utilize non-competitive procurement only in situations outlined in the exemption, exception, or non-application clauses of the AIT or other trade agreements, or procurements under \$10,000.

Prior to commencement of non-competitive procurement, supporting documentation must be completed and approved by the appropriate level of delegated authority in section Mandatory Requirement #2 of this document within Kerry's Place. (Utilize Non-Competitive Approval Form).

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Recipients must create and retain written documentation to justify any exceptions to competitive procurement practice. (Refer to Appendix I attached - list of exceptions Agreement on Internal Trade.) With each use of non-competitive procurement process, that exceed procurement thresholds including sole sourcing and single sourcing, written documentation must address all of the following matters:

- the rationale to support the exception
- a description of the circumstances;
- a description of the requirements and the required timing; and
- the alternatives considered and the criteria used to evaluate the alternatives.

**Mandatory Requirement #22: Contract Management**

Procurements and the resulting contracts must be managed responsibly and effectively. Payments must be made in accordance with provisions of the contract. All invoices must contain detailed information sufficient to warrant payment. Any overpayments must be recovered in a timely manner. Assignments must be properly documented. Supplier performance must be managed and documented, and any performance issues must be addressed.

To manage disputes with suppliers throughout the life of the contract, Kerry's Place should include a dispute resolution process in its contracts.

For services, Kerry's Place 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.

Ensure that expenses are claimed and reimbursed only where the contract explicitly provides for reimbursement of expenses.

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

For reporting and auditing purposes, all procurement documentation, as well as any other pertinent information must be retained in a recoverable form for a period of seven years.

Handling, storing and maintaining the suppliers' confidential and commercially sensitive information is carried out in accordance with Kerry's Place Records Retention Policy.

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

Kerry's Place must monitor any conflict of interest that may arise as a result of the members' of Kerry's Place, advisors', external consultants', or suppliers' involvement with the Supply Chain Activities.

Individuals involved with the Supply Chain Activities must declare actual or potential conflicts of

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

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

Competitive procurement documents must outline bid dispute resolution procedures to ensure that any dispute is handled in an ethical, fair, reasonable, and timely fashion. Bid dispute resolution procedures must comply with bid protest or dispute resolution procedures set out in the applicable trade agreements.

### **Evaluation:**

This policy will be reviewed every three years by the Finance department in collaboration with the Executive Management team.

### **Related Documents, Forms and Tools:**

Requests for information or documentation will be provided by the Procurement Officer.

Single-Sole Sourcing Approval Form

#### **BPS Directive (2011)**

<http://www.doingbusiness.mgs.gov.on.ca/mbs/psb/psb.nsf/English/BPSSC-Sec>

#### **Supply Chain Guidelines (2009)**

<http://www.fin.gov.on.ca/en/ontariobuys/documents/scg.html>

#### **Agreement on Internal Trade (AIT) (May 2007)**

Government of Canada. (February 2009). A consolidation of the Agreement on Internal Trade (the original Agreement as modified by subsequent protocols of amendment). Retrieved April 8, 2009, from [http://www.ait-aci.ca/index\\_en/ait.htm](http://www.ait-aci.ca/index_en/ait.htm)

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**BPS Supply Chain Procurement Policy Guidelines (December 2007)**

BPS Supply Chain Secretariat, Ontario Ministry of Finance. (June 2008). *Ontario Buys Procurement Policy Guidelines*. Toronto: BPS Supply Chain Secretariat. (Available upon request.)

**Canadian Contract and Procurement Law**

**Appendix:**

**Appendix I: List of Exceptions Agreement on Internal Trade – Circumstances where Competitive Bidding is not required**

**1.1. *Non-competitive Procurement***

Kerry's Place should employ competitive procurement processes to achieve optimum value for money. It is recognized, however, that special circumstances may require Kerry's Place to use non-competitive procurement. Kerry's Place 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, Kerry's Place may apply this clause as basis for conducting non-competitive procurement.

Kerry's Place 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 non-profit organization;
- Procurement of goods and services purchased on behalf of an entity that is out of scope of the Directive;
- Procurement from philanthropic institutions, prison labour or persons with disabilities;
- Procurement of any goods the inter-provincial movement of which is restricted by laws not inconsistent with the trade agreements;

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- 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, Kerry's Place may apply this clause as basis for conducting non-competitive procurement.

Kerry's Place 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***

Kerry's Place may conduct non-competitive 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.**

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- 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 Kerry's Place 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 pre-mixed 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;
- 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, Kerry's Place may conduct non-competitive 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;

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- 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.