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Supply Chain Management Act (Government, Broader Public Sector and Health Sector Entities), 2019

S.O. 2019, CHAPTER 15

SCHEDULE 37

Consolidation Period: From April 14, 2022 to the e-Laws currency date.

Last amendment: 2022, c. 11, Sched. 5, s. 18.

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PURPOSES AND DEFINITIONS

Purposes

1 The following are the purposes of this Act:

1. To enhance supply chain management in respect of government entities, broader public sector entities and health sector entities.
2. To establish a framework for regulating supply chain management, including procurement, in respect of such entities.
3. To leverage the buying power of such entities.
4. To set out roles and responsibilities for supply chain management, including procurement.

Definitions

2 In this Act,

“broader public sector entity” means,

- (a) a board as defined in subsection 1 (1) of the *Education Act*,
- (b) a post-secondary educational institution in Ontario that receives regular operating funding directly from the Government of Ontario,
- (c) an agency designated as a children’s aid society under subsection 34 (1) of the *Child, Youth and Family Services Act, 2017*,
- (d) a corporation controlled by one or more broader public sector entities that exists solely or primarily for the purpose of purchasing goods or services for the broader public sector entity or broader public sector entities, and
- (e) any other persons or entities prescribed for the purposes of this definition; (“entité parapublique”)

“FIPPA or MFIPPA institution” means an entity that is either,

- (a) an institution as defined in subsection 2 (1) of the *Freedom of Information and Protection of Privacy Act*, or
- (b) an institution as defined in subsection 2 (1) of the *Municipal Freedom of Information and Protection of Privacy Act*; (“institution visée par une des lois sur l’accès à l’information”)

“government entity” means,

- (a) the Crown in right of Ontario, including any ministry of the Government of Ontario,
- (b) a public body within the meaning of the *Public Service of Ontario Act, 2006*,
- (c) the Independent Electricity System Operator, and
- (d) Ontario Power Generation Inc. and each of its subsidiaries; (“entité gouvernementale”)

“health sector entity” means,

- (a) a person or entity that receives funding from a government entity to provide or support the provision of health services and is prescribed for the purposes of this definition, and
- (b) a corporation controlled by one or more persons or entities mentioned in clause (a) that exists solely or primarily for the purpose of purchasing goods or services for those persons or entities and is prescribed for the purposes of this definition; (“entité du secteur de la santé”)

“Minister” means the member of the Executive Council to whom responsibility for the administration of this Act is assigned or transferred under the *Executive Council Act*; (“Ministre”)

“personal information” means personal information as defined in subsection 2 (1) of the *Freedom of Information and Protection of Privacy Act* and subsection 2 (1) of the *Municipal Freedom of Information and Protection of Privacy Act*; (“renseignements personnels”)

“prescribed” means prescribed by regulation; (“prescrit”)

“regulation” means a regulation under this Act; (“règlement”)

“supply chain management” means the broad range of activities related to the procurement of goods and services, including,

- (a) planning and sourcing,
- (b) setting standards and specifications,
- (c) conducting market research,
- (d) developing procurement policy,
- (e) determining procurement methodologies,
- (f) coordinating and conducting procurements,
- (g) controlling logistics and inventory,
- (h) managing information systems,
- (i) coordinating the actions of government entities, broader public sector entities, health sector entities and supply chain management entities and furthering those entities' collaboration,
- (j) overseeing resources,
- (k) arranging project financing,
- (l) managing contracts and relationships,
- (m) receiving and responding to complaints,
- (n) disposing of surplus assets, and
- (o) carrying out a prescribed activity; ("gestion de la chaîne d'approvisionnement")

"supply chain management entity" means an entity designated under section 6 or a corporation incorporated under section 7.
("entité de gestion de la chaîne d'approvisionnement")

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section: (See: 2022, c. 11, Sched. 5, s. 18 (1))

Non-application re personal protective equipment and critical supplies and equipment

2.1 Supply chain management under this Act does not include activities related to the procurement of personal protective equipment or critical supplies and equipment. 2022, c. 11, Sched. 5, s. 18 (1).

Section Amendments with date in force (d/m/y) [+]

OBLIGATIONS OF GOVERNMENT, BPS AND HEALTH SECTOR ENTITIES

Supply chain management

3 A government entity, broader public sector entity or health sector entity shall comply with regulations governing how it carries out supply chain management.

Vendor performance standards and practices

4 A government entity, broader public sector entity or health sector entity shall comply with regulations requiring it to implement specified vendor performance standards and practices.

Reporting requirements

5 A government entity, broader public sector entity or health sector entity shall comply with regulations requiring it to report with respect to supply chain management and vendor performance.

SUPPLY CHAIN MANAGEMENT ENTITIES

Designation of entity

6 (1) The Lieutenant Governor in Council may, by regulation, designate a government entity, broader public sector entity or health sector entity as an entity to provide or support supply chain management on behalf of a different government entity, broader public sector entity or health sector entity.

Object and duty

(2) It is an object and a duty of a designated entity to provide or support supply chain management on behalf of the different entity, in addition to any prescribed object or duty.

Creation of corporation

7 (1) The Lieutenant Governor in Council may, by regulation, incorporate one or more corporations without share capital that have as their object and duty providing or supporting supply chain management on behalf of government entities, broader public sector entities or health sector entities, in addition to any prescribed object or duty.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 7 (1) of the Act is repealed and the following substituted: (See: 2022, c. 11, Sched. 5, s. 18 (2))

Creation of corporation

(1) The Lieutenant Governor in Council may, by regulation, incorporate one or more corporations without share capital that have as their object and duty,

- (a) providing or supporting supply chain management on behalf of government entities, broader public sector entities or health sector entities in accordance with this Act and the regulations;
- (b) any objects or duties as may be delegated to the corporation under section 12 of the *Personal Protective Equipment Supply and Production Act, 2022*; and
- (c) such other objects or duties as may be prescribed. 2022, c. 11, Sched. 5, s. 18 (2).

Corporate and financial matters

(2) The regulation may provide for any of the corporate and financial matters set out in the Schedule.

Section Amendments with date in force (d/m/y) [+]**Protection from personal liability**

8 (1) A regulation under section 6 or 7 may provide that no action or other civil proceeding, including any arbitral, administrative or court proceeding, may be commenced against a current or former member, director, officer, employee or agent of the supply chain management entity for,

- (a) any act done in good faith in the exercise or performance or intended exercise or performance of a power or duty under this Act or the regulations; or
- (b) any neglect or default in the exercise or performance in good faith of such a power or duty.

Liability of supply chain management entity

(2) A regulation under subsection (1) does not relieve the supply chain management entity of liability to which it would otherwise be subject.

Required contractual terms limiting liability

9 A regulation under section 6 or 7 may,

- (a) require the supply chain management entity to include in specified contracts or classes of contracts specified terms limiting the liability of the supply chain management entity or of a current or former member, director, officer, employee or agent of the supply chain management entity, subject to any prescribed exceptions; and
- (b) deem specified contracts or classes or contracts entered into by the supply chain management entity after the regulation comes into force to include those terms.

Fees

10 (1) A regulation under section 6 or 7 may authorize the supply chain management entity to, subject to the approval of the Minister, set fees or charges relating to any object or duty of the supply chain management entity under this Act or the regulations, which may include,

- (a) a service fee;
- (b) a membership fee;
- (c) a subscription fee;
- (d) a proprietary charge; and

(e) any prescribed fee or charge.

Money appropriated by the Legislature

(2) A fee or charge under subsection (1) that is payable out of the Consolidated Revenue Fund shall be paid out of the money appropriated for the relevant purposes by the Legislature.

INFORMATION

Personal information

11 (1) A government entity, broader public sector entity or health sector entity that is a FIPPA or MFIPPA institution shall comply with the regulations authorizing, requiring or governing the collection of personal information, directly or indirectly, for the purposes of ensuring compliance with the regulations referred to in sections 4 and 5.

Limits on collection, use and disclosure

(2) The entity shall not collect, use or disclose personal information if other information will serve the purpose of the collection, use or disclosure.

Same

(3) The entity shall not collect, use or disclose more personal information than is reasonably necessary to meet the purpose of the collection, use or disclosure.

Notice required by s. 39 (2) of FIPPA or s. 29 (2) of MFIPPA

(4) If the entity collects personal information indirectly under subsection (1), without limiting the entity's ability to give notice in other ways,

(a) the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act*, if it applies to the entity, may be given by a public notice posted on the entity's website; or

(b) the notice required by subsection 29 (2) of the *Municipal Freedom of Information and Protection of Privacy Act*, if it applies to the entity, may be given by a public notice posted on the entity's website.

Commercial information, etc.

12 A disclosure of information in compliance with the regulations referred to in sections 4 and 5 is deemed not to contravene the provisions of an agreement that purports to restrict or prohibit the disclosure of information.

COMPLIANCE

Deemed part of agreement

13 Every obligation of a broader public sector entity or health sector entity under this Act is deemed to be an obligation it is required to comply with under the terms of every agreement or other funding arrangement between the entity and the Crown in right of Ontario or between the entity and an agency of the Crown in right of Ontario.

Supply chain management contractors

14 A government entity, broader public sector entity or health sector entity that contracts with a third party supply chain manager shall ensure that the contract requires the supply chain manager to comply with any requirement imposed under this Act on the government entity, broader public sector entity or health sector entity, with any necessary modifications.

Withholding funds

15 (1) If a broader public sector entity or health sector entity fails to comply with this Act, the Management Board of Cabinet may require a minister of the Crown to withhold part or all of any amount authorized by law to be paid to that entity.

When amount withheld may be paid

(2) An amount withheld shall be paid only when the entity complies.

Failure continuing past fiscal year end

(3) If the failure to comply continues to the March 31 after the Management Board of Cabinet required the withholding,

(a) the entity ceases to be entitled to be paid; and

(b) the amount withheld is part of the Consolidated Revenue Fund.

Public to be protected

(4) The broader public sector entity or health sector entity shall endeavour to minimize any impact of the application of this section on its provision of services to the public.

CROWN LIABILITY

Limitations on remedies

16 (1) No cause of action arises against the Crown or any current or former member of the Executive Council or any current or former employee or agent of or adviser to the Crown, as a direct or indirect result of,

- (a) the enactment, operation, administration or repeal of any provision of this Act;
- (b) the making or revocation of any provision of the regulations made under this Act; or
- (c) anything done or not done in accordance with this Act or the regulations made under this Act.

Proceedings barred

(2) No proceeding, including but not limited to any proceeding in contract, restitution, tort, misfeasance, bad faith, trust, fiduciary obligation or otherwise, that is directly or indirectly based on or related to anything referred to in subsection (1) may be brought or maintained against the Crown or any current or former member of the Executive Council or any current or former employee or agent of or adviser to the Crown.

Application

(3) Subsection (2) applies to any action or other proceeding claiming any remedy or relief, including specific performance, injunction, declaratory relief, any form of compensation or damages, including loss of revenue and loss of profit, or any other remedy or relief, and includes any arbitral, administrative or court proceeding, including a proceeding to enforce a judgment, order or award made by a court, tribunal or arbitrator outside of Canada.

Retrospective effect

(4) Subsections (2) and (3) apply regardless of whether the cause of action on which the proceeding is purportedly based arose before, on or after the day this subsection came into force.

Proceedings set aside

(5) Any proceeding referred to in subsection (2) or (3) commenced before the day this subsection came into force is deemed to have been dismissed, without costs, on the day this subsection came into force.

CONFLICTS

Conflict with MBC directive

17 In the case of a conflict between a regulation made under this Act and a directive made by the Management Board of Cabinet, the regulation prevails.

REGULATIONS

Regulations

18 The Lieutenant Governor in Council may make regulations,

- (a) governing anything that, in this Act, is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations, or as authorized, specified or provided for in the regulations;
- (b) clarifying the meaning of any term or phrase used in this Act that is not defined in this Act;
- (c) exempting an entity from a provision of this Act and setting conditions for the exemption;
- (d) providing for other matters to carry out the purpose of this Act.

19 OMITTED (PROVIDES FOR AMENDMENTS TO THIS ACT).

20 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT).

21 OMITTED (ENACTS SHORT TITLE OF THIS ACT).

SCHEDULE
CORPORATE AND FINANCIAL MATTERS

The following are the corporate and financial matters referred to in subsection 7 (2) that a regulation that incorporates a corporation without share capital may provide for:

1. The name of the corporation.
2. The composition of the corporation.
3. Whether the corporation is an agent of the Crown.
4. Whether all or part of the *Not-for-Profit Corporations Act, 2010* and the regulations made under it applies to the corporation.
5. Whether all or part of the *Corporations Information Act* and the regulations made under it applies to the corporation.
6. Whether all or part of other corporate statutes and regulations made under those statutes apply to the corporation.
7. The composition of the board of directors and the appointment and remuneration of directors. As an option, the regulation may authorize the Lieutenant Governor in Council to appoint directors and determine their remuneration.
8. Whether the corporation can direct all or some of its activities towards a charitable purpose.
9. The capacity, rights, powers and privileges of the corporation and any restrictions on them.
10. The appointment and remuneration of the chief executive officer. As an option, the regulation may authorize the Lieutenant Governor in Council to make the appointment and determine the remuneration.
11. The corporation's authority to employ or otherwise engage persons for the proper conduct of its activities. The regulation may provide, instead, that employees may be appointed under Part III of the *Public Service of Ontario Act, 2006*.
12. The appointment of the corporation's auditors.
13. The corporation's authority to establish, acquire, wind up, dispose of or otherwise deal with, in whole or in part, a subsidiary and any restrictions on the corporation's authority. As options, the regulation may prohibit any of these actions or require the prior written consent of the Minister for any of these actions.
14. The corporation's authority to enter into, dissolve or otherwise deal with, in whole or in part, an interest in a partnership (including a limited partnership or a limited liability partnership) and any restrictions on the corporation's authority. As an option, the regulation may require the prior written consent of the Minister for any of these actions.
15. The corporation's authority to establish, acquire, wind up, dispose of or otherwise deal with, in whole or in part, a trust or any other entity and any restrictions on the corporation's authority. As an option, the regulation may require the prior written consent of the Minister for any of those actions.
16. The corporation's authority to borrow, invest funds or manage financial risks. As an option, the regulation may,
 - i. prohibit the corporation from doing so unless the activity is authorized by a by-law that has been approved in writing by the Minister and by the Minister of Finance,
 - ii. provide that the Ontario Financing Authority shall co-ordinate and arrange those activities unless the Minister of Finance, in writing, directs a person other than the Ontario Financing Authority to do so, and
 - iii. provide that the direction may be general or specific and may include terms and conditions that the Minister of Finance considers advisable.
17. The corporation's authority to retain all or part of its assets and revenues outside the Consolidated Revenue Fund, despite Part I of the *Financial Administration Act*, but subject to any prescribed conditions and restrictions.
18. Requirements respecting the accountability of the corporation to the Crown, including the following:
 - i. A requirement to enter into a memorandum of understanding or a performance agreement with the Minister, to submit business plans and financial statements to the Minister in each fiscal year and to give annual reports and other reports to the Minister, as the Minister may require.

ii. Requirements respecting inspections, reviews and audits by the Minister or the Minister's delegate.

19. The Minister's authority to issue policies and directives to the corporation relating to the exercise of its powers or the performance of its duties and the board of directors' duty to ensure that the policies and directives are implemented promptly and efficiently.
20. The winding up and dissolution of the corporation and the transfer of its assets, liabilities, rights and obligations.
21. Any other matters that the Lieutenant Governor in Council considers necessary or advisable.

2019, c. 15, Sched. 37, Sched., s. 19.

Section Amendments with date in force (d/m/y) [+]

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