

BPS International Activity - Request for Info

February-08-16 1:11 PM

Subject	BPS International Activity - Request for Info
From	Erry, Sam (TBS)
To	Marshall, John W. (MEDEI/MRI); Severino, Victor. J. (MEDEI/MRI)
Cc	Brezer, David (CAB); Greenberg, Martha (CAB); Djurakov, Melissa (TBS); Pauker, Carol (TBS); Ellis, Matthew (TBS); Griffith, Ted (TBS)
Sent	February-05-16 10:43 AM
Attachments	 Template-BPS Organizations-International Activities-...

John and Victor:

In partnership with Cabinet Office, we are seeking to better understand the behaviour of Broader Public Sector (BPS) organizations engaged in international activities, and any guidance or supports that Ontario may offer these organizations when conducting these activities.

Treasury Board Secretariat is conducting initial research in this area, in order to develop a basic understanding of the activities in question and any associated rules or requirements. As a first step, we are requesting key information from MEDEI to support this work.

As you know, the *BPS Accountability Act, 2010* defines designated BPS organizations as hospitals, universities and colleges, school boards, Children's Aid Societies, community care access corporations and any organization that received \$10 million or more from the Ontario government in the government's prior fiscal year. As the BPS encompasses a wide range of organizations in a variety of sectors, we recognize that the size and scope of their international activities will also vary a great deal.

With this in mind, we are seeking information on what guidance and support may be provided to help BPS organizations that are engaged in, or are planning to engage in, international activities.

Some of our specific questions include:

- Are there any formal programs targeted to support BPS organizations wishing to undertake activities abroad?
- If not, are BPS organizations able to access programs and services available to Ontario private-sector companies?
- Has Ontario ever been asked to support a BPS organization's specific international activity?

Please complete the attached template with as much detail and supporting information as you can provide and submit to: Ted Griffith, Project Lead, Corporate Policy and Accountability Branch in my division at ted.griffith@ontario.ca. We need a response by February 28, 2016 in order to consolidate and assess information for corporate consideration.

Thank you,

Sam Erry

BPS International Activity - Request for Info

February-08-16 1:12 PM

Subject	BPS International Activity - Request for Info
From	Erry, Sam (TBS)
To	Anderson, Mike (MOL); Burke, Kelly (OFA); Burns, Robert (ENERGY/MEDEI/MRI); Cassimatis, Jim (MAH); Cornacchia, Nadia (MCSS); Fraser, Melanie (TBS); Lam, Cindy (MCIIT); Lang, Terri (CAB); Mantle, Scott (MNDM); McAusland, Linda (MTO); McMillan, Clare (MGCS); Pontone, Dante (MAG); Primeau, Christine (OMAFRA); Reid, Paula (MNRF); Rubashewsky, Bohodar (EDU); Taylor, Heather (MOECC); Vanderduim, Drew (MCSS); Weir, Mike (MOHLTC); Zisser, Helmut (MOF)
Cc	Brezer, David (CAB); Greenberg, Martha (CAB); Djurakov, Melissa (TBS); Pauker, Carol (TBS); Ellis, Matthew (TBS); Griffith, Ted (TBS); Addesi, Josie (MOHLTC); Aldsworth, Sharon (MCSS); Barbe, Patti (MOECC); Berman, Roger (MCIIT); Booth, Alex (MTO); Buscemi, Maria (OFA); Careri, Connie (ENERGY/MEDEI/MRI); Caya, Denise (MNDM); Cheng, Cathy (MAH); Czarkowski, Stephanie (MOF); de Braganca, Lorraine (MOHLTC); Diaram, Savitri (MGCS); Dicu, Ruxandra (EDU); Dissanayake, Dinoo (MCSS); Felix, Meera (MOL); Gunn, Cathy (MNRF); Henderson, Michelle (MOF); Jeanes, Bridget (MOF); Jewell-Claessen, Terrilyn (TBS); Joakim, Kate (EDU); Judges, Nadia (MAG); Khan, Saba (TBS); Kulla, Suzanne (MNRF); Lafortune, Chantal (MOL); Leach, Madison (MAG); Leal, Christopher (MCIIT); Lee, Mona (MGCS); Maguire, Jack (MCIIT); Mammoliti, Santina (OMAFRA); Ng, Jerry (MOECC); Ng, May (EDU); Ngira-Batware, Douglas (OFA); Nowak, Gabrielle (MAG); Ogilvie, Ellen (MCSS); Pancel, Pam (MNDM); Pollari, Tiana (MCSS); Ponte, Judith (ENERGY/MEDEI/MRI); Proctor, Lydia (MAH); Rice, Kelli (OMAFRA); Sampson, Jonathan (MAG); Smith, Kahly (MTO); Teschner, Sarah (CAB); Wongsiktsang, Margaret (MAH); Wyver, Patricia (MNRF)
Sent	February-05-16 10:44 AM
Attachments	 Template-BPS Organizations-International Activities-...

Good morning, colleagues:

In partnership with Cabinet Office, we are seeking to better understand the behaviour of Broader Public Sector (BPS) organizations engaged in international activities, and any expectations or requirements that Ontario may have of these organizations when conducting these activities.

Treasury Board Secretariat is conducting initial research in this area, in order to develop a basic understanding of the activities in question and any associated rules or requirements. As a first step, we are requesting core information from your ministry that will support this work.

As you know, the *BPS Accountability Act, 2010* defines designated BPS organizations as hospitals, universities and colleges, school boards, Children's Aid Societies, community care access corporations and any organization that received \$10 million or more from the Ontario government in the government's prior fiscal year. As the BPS encompasses a wide range of organizations in a variety of sectors, we recognize that the size and scope of their international activities will also vary a great deal.

With this in mind, we are seeking information on:

- what expectations or requirements (such as policies, rules, or clauses in funding/accountability agreements) that ministries may have for BPS organizations that are engaged in international activities;
- what guidance and support may be provided to help BPS organizations meet

- these requirements; and
- what systems may be in place to monitor the international activities of BPS organizations.

Please complete the attached template with as much detail and supporting information as you can provide and send to: Ted Griffith, Project Lead, Corporate Policy and Accountability Branch in my division at ted.griffith@ontario.ca . We need a response by February 28, 2016 in order to consolidate and assess information for corporate consideration

Thank you,

Sam Erry

Evidence Based Decision Making April 11/16

April-11-16 2:05 PM

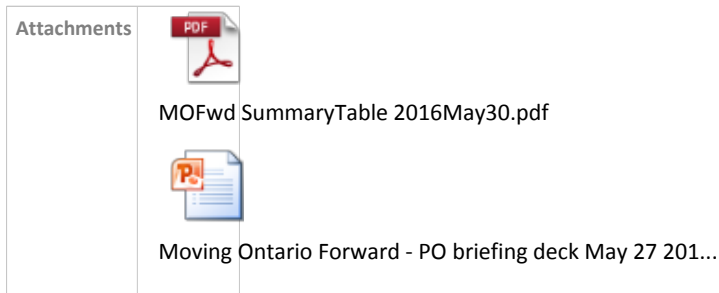
Attachments	
	EBDMF - PO Briefing.pptx
	
	EBDM Framework-Approval Binder.docx

[Link to Outlook item](#)

Notes

Moving Ontario Forward Briefing (w/PO/CO/TBS)

May-31-16 9:19 AM



[Link to Outlook item](#)

Notes

PO

- Public reporting - need to think that through, commitment exists
- Common understanding of approvals going forward
- Nomenclature/capturing updated in planning
 - e.g., "next wave"/"big move" - need to move forward as these have been advanced and not reflecting that in materials/conversations
- Slide 4 - "new initiatives", \$150M avg annual investment
 - This is minuted
 - Is policy approval at odds with this minute
 - ☑ ◦ Do up chronology of all approvals (TB/policy)
- Federal funding
 - Have we made assumptions here, accounted for federal funding? Not yet
 - TBS to do up a few scenarios on federal funding
- Highways
 - Are all these part of 5 yr highway plan or are some net new?
 - Some were new in PRRT
 - Also approved in policy at P&P (when OCIF got approved)
- Walkerton Clean Water Centre
 - ☑ ◦ Commitment made to provide ongoing funding (operating?)
- Timing
 - All construction has to be completed in 10yrs
 - Would be ongoing operating costs
 - Could push out fiscal impact
- Originally was a 10yr plan, assuming certain revenues
 - Now, can you add new projects as won't really spend full allocation in 10yrs?
 - Don't agree - there will be 30B cash out the door (fiscal is different) by 25/26
 - If dedicated revenues will be higher, then maybe there is additional room
 - Additional revenue would displace required borrowing
 - ◆ Could look at keeping borrowing as original level but use additional revenue for new projects?
- Profile of dedicated revenues
- Need to understand fiscal impact of projects, in addition to cash
-

BPS compensation July 13/16

July-13-16 11:22 AM

- Need to do some consultation, they are very heated about what hearing and how interventionist gov would be
- M is ok to do a principled based regulatory framework
 - Cash compensation benchmarked against public sector (limited to private but in some cases might be ok such as electricity)
 - Benefits
 - Accountability with boards to abide by that and be transparent, boards would need to post for comment before finalized,
- Would be broad framework
- Pushes most accountability to employers with gov setting regulatory framework
 - Means gov wouldn't do hospital by hospital decisions
- Start quiet conversations (non-disclosure agreements) to test this with some key sectors
- We wouldn't mandate by sector or organization, would be broader
 - We would publish a framework, not grids
 - Wouldn't require changes to the Act
- Do all before House returns
- Loopholes...how do you protect against
 - e.g., hospital CEO gets paid top up from foundation or companies create subsidiaries
- Audit/enforcement?
 - We have it under Act, without leg changes we can't give that function to others
- Boards will need to post list of comparitors when they consult and proposed comp
 - If seems unreasonable, TBS M will come under pressure to use audit/enforcement authority
 - Most likely boards will commission consultant to do jurisdictional comparison so they can hide behind that when justifying compensation
- This isn't a strategy to minimize comp, this is more about holding boards fundamentally accountable for decisions they make, within clear set of rules that we establish

Fiscal update Sept. 1/16

September-01-16 11:00 AM

Subject	FW: Deck for SoC Briefing
From	Foster, Robert (CAB)
To	Greenberg, Martha (CAB)
Sent	September-01-16 10:32 AM
Attachments	 FPC_FiscalUpdateDeck_v14.pptx

Rio2016

- How do we bring this forward - do we need a cab retreat on fiscal plan?
 - Need to talk with them before house resumes/SFT
 - Bring 2 Ministers together even if P can't make it
 - Circulate tomorrow
 -
- Revenue
 - Need to give staff advice on revenue, showing risks up and down, let them decide what range of risk they want to take and therefore show publicly
 - We do this on expense side but need to give staff advice on revenue side and let politically take the risk
- Public accounts - latest on AG
 - Range of 3.3-3.8
 - 3.8 assumes AG agrees in treatment of GIF and Remedy
 - 3.3 assumes AG is ok to count GIF as error but have to remove Remedy
 - Other issues on treatment of H1/OPG

Fiscal update Sept. 7/16

September-07-16 10:35 AM

Public accounts - discussions with AG

- Treatment of consolidation of OPG and H1
- GIF investments
 - We book funding at time of commitment, with time to negotiate TP agreements
 - Current AG feels taken too long to negotiate TP agreements so can't book funding at time of commitment, should be at time of TP
- Treatment of remedy with education

BPS Executive Compensation May 24/17

May-24-17 10:14 AM

Subject	FW: BPS Executive Compensation
From	Rankin, Christine (CAB)
To	Greenberg, Martha (CAB)
Cc	Brezer, David (CAB)
Sent	May-24-17 10:13 AM
Attachments	 BN TB Submission May v 6 2017-05-16.docx  LRC Form BPS Framework Amendments v 5 2017-05-24.docx  BPS Exec Comp Program Directive - May 23.docx

Subject	BPS Exec Comp
From	Rankin, Christine (CAB)
To	Greenberg, Martha (CAB); Brezer, David (CAB)
Cc	Johnston, John (CAB)
Sent	May-24-17 8:45 AM
Attachments	 BPS Exec Comp - Regroup and Approach to Managing Inc...  BPS Exec Comp Policy - Update on Approach May 4 v6.p...  BPS Exec Comp Program Directive - May 16 v17 (2).docx

OLD...

Approach

What reg is for

What directive is for

- Reg changes to give gov authority to approve some components of exec comp that are already being developed under existing framework
 - New directive would compel the employers to submit their proposed programs to gov
 - User guide, one-stop shop to refer to when they complete their exec comp program, with templates etc
 - Must adhere to directive, submit completed package to gov
 - Gov then provides approval on specific components of the directive, under authority of reg
 - Feb letter said gov needed to be made aware of the contents - but that didn't seem to be enough, needed legal tool to require
 - April approach was very heavy handed
 - This approach is somewhere in the middle - not full repeal, still allowing employers to operate under existing framework but asking gov to step in on specific areas (e.g., who the comparators are)
 - Stakeholders - employers have done a lot of work to comply with ECF, would be very costly to just throw that out, leverage that work
- p. 4 of draft directive lays out process
- Now - have to complete entire process by Sept. 5 2017
 - Will strike that
 - Directive will dictate submission timeline
 - Initial submission by Sept. 29, 2017
 - Second step is approval in principle, e.g., comparators look ok, all looks fine to go and post publicly, so with-holding final approval until hear back from public posting
 - Letter would say go ahead
 - Public consult isn't changing, as set out in reg
 - Org submits program with summary of public feedback and how been considered
 - Page 6 - A through E exist in regulation now but new is A through D after - so have to find comparable org and then comparable position
 - In directive but not in reg - ways organizations can select comparators (aka guidelines)
 - Compensation increase - will be set out in reg
 - Are increases restricted on position, incumbent, classes of positions?
 - Restrict compensation envelope - so amount you can pay out, overall envelop, and org determines how salaries are adjusted within
 - Nothing directive on foundation - through directive are giving power to ministries to ask for information on indirect compensation
 - What about those that are already in the process of their ECF (e.g., already posted)
 - Don't know of any org that are in the middle - following the Feb letter, all orgs were more or less frozen, awaiting more info on how to proceed
 - Those that have already completed program - grandfathered until program is to be refreshed
 - 7 organizations

Capital Plan May 24/17

May-24-17 2:06 PM

Subject	Fw: Briefing- Capital Plan
From	Kwamena, Boafoa (CAB)
To	Greenberg, Martha (CAB)
Sent	May-24-17 7:55 AM
Attachments	 Capital_Plan_SOC_v3.pptx

- Any 10year plan will show a decrease in out years, but that isn't real, as we know that roads etc need maintenance but we don't have that factored in yet
 - When we do AFP often build in maintenance so through comprehensive approvals/plans, it is captured but one-offs for maintenance, never an appetite
- Asset management - need to do better planning internal to the province, not just as munis to do it
 - Working with ministries now, some better than others
 - Will take 2-3 years to have robust asset management plan for gov assets
- How do you show demand/need vs what is in the plan, doesn't actually show what is needed (e.g., affordable housing)
- Show total spend (gross) year over year and show how much is federal funding
 - If federal funding comes in for a project, if that offsets provincial funding, that funding should remain in the sector it was planned for
- Potential pressures (unfunded) - doesn't present full cost of even the construction (e.g., financing), should show full all in cost of moving (not even operating but just even factoring in financing, escalation), being consistent with full life-cycle costs.
- Projects not built into plan
 - HSR
 - Rail rationalization
 - Next wave (only have planning studies funding)
 -

Inyear management PO June 5/17

June-05-17 12:19 PM

- Net debt to GDP - explain the ins/out to understand what have to do to manage this number
- AG takes 60 days to do report so working backwards from election and writ, means budget can't be later than late Feb budget
- Low carbon economy fund - show in the fed/prov section
 - No benefit to fiscla plan as incremental
- AG gets more info for pre-electino report than otherwise
- Meeting with big ministries on more regular basis - do with MOHLTC, but add EDU, MAESD, maybe others based on those that appear to be off between estimates and actuals

Mike feedback

- FPC - next week due to AB
 - Focus on new piece, shorten recapp
- Need to socialize the ideas here and buy in
 - May need more details on in-year proposed approach

In-yr management MP June 15/17

June-15-17 8:26 AM

Attachments
 Fiscal Policy Framework Deck_v22.pptx
 Gantt Chart Fiscal Planning - v18.pdf
 June2017_FrameworkFiscalMonitor_v5b.pdf

Pw: Confederation17

FES timing

- Used either as update on budget or launch new initiatives
 - Plan on latter (seniors and small biz)
- Can't do right after house comes back but thanksgiving timeframe?

Placemat

- Add small biz and seniors in the key risks/pressures that we are tracking
- More detailed version of the expense risk (Mike)

In -year management

- Better disclosure and more often
- C&T - how are we matching funds

FPC aug. 2/17

August-02-17 9:06 AM

Attachments	
	2018-19 PRRT_PlanningBudgetingFramework - July262017...
	
	FiscalUpdate_v11.pptx
	
	FPC Agenda -August 2 2017.docx

Minimum wage

- Need to understand the impacts
 - Child care -
 - Developmental services
 - TBS undertaking work on sector analysis??

FES

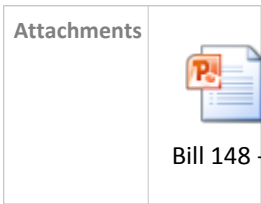
- Need better sense of true risks and numbers

Budget planning/PRRT

- Not all ideas come through PRRT
- Priority areas can be tracked differently?
- Line ministries need to better develop implementation plans and mitigations
- Early political engagement to prevent ministries doing work on something where there is no appetite
 - How to involved political early to talk about opportunity areas
- Is there a role of TB members/board as a whole to adopt a set of principles that would support decision making/giving ministries parameters
 -

Min wage impacts FPC Oct. 4

October-04-17 10:33 AM



Bill 148 - Implications Framework DRAFT (10-03-2017)...

OP Trust Nov. 2/17

November-02-17 10:38 AM

Subject	FW: OPTrust
From	Kwamena, Boafoa (CAB)
To	Greenberg, Martha (CAB)
Sent	November-02-17 10:36 AM
Attachments	 OPSEU Pension Plan Expansion_MPC_2017Nov02.pptx

- Is this a jointly sponsored pension plan or moving to a MEPP

Buy American leg update

February-12-18 11:52 AM

Subject	FW: FINAL electronic version - Buy American
From	Downarowicz, Ewa (CAB)
To	Greenberg, Martha (CAB)
Cc	Johnston, John (CAB); Chiu, Genevieve (CAB)
Sent	February-09-18 12:13 PM
Attachments	 Fairness in Procurement - Change Memo - 20180208_3.d...  GOV2017.025.e12 (procurement).docx  Compendium (Draft 03302017 - updated 20180205) v. 2....

Hi Martha,

Final materials from TBS attached and we are expecting all approvals to be in place by EOD today. As I mentioned, they have a raised an issue with respect to getting Minister's signatures who is away until next Thursday - we are working on a solution to get signed materials early next week.

Thanks,
Ewa

Ewa Downarowicz
Economic, Transportation & Infrastructure Policy
Policy and Delivery Division
Cabinet Office
Tel: 416-325-5304

From: Chiu, Genevieve (CAB)
Sent: February-09-18 10:10 AM
To: Scott-Vickers, James (CAB)
Cc: Frndova, Lucia (CAB); Downarowicz, Ewa (CAB); Chiu, Genevieve (CAB)
Subject: FINAL electronic version - Buy American

So here are the electronic finals. They are making their way through TBS approvals internally which should be done by EOD.

The outstanding issue is still getting a physical signature from their Minister – how/when. I'm still pressing them to get that asap somehow.

Genevieve Chiu
Tel: 416-327-6449
Genevieve.Chiu2@ontario.ca

Fairness in Procurement Legislation/Reg March 14/18

March-14-18 2:32 PM

Attachments



FIP regs MC (2018-03-14) Clean Copy v4.pptx

[Link to Outlook item](#)

Notes

- OPG - named directly, flagged concern through reg registry
 - Proposal to leave room to request an exemption but not exempt them by name in leg or reg
 - CEO raising with AB the concerns
- If any state changes and exempts Ontario, commit to also removing our protectionist
 - Need to communicate that even though can't put anything in the reg
 - Could look at including a preamble in reg?
- Risks:
 - If future considerations are for: concrete, cement and aluminium, need to think through

Reg Posting



Proposed Regulations under the Proposed Fairness in ...

FIP Trade

March-16-18 10:05 AM

- Decisions earlier were to align with procurement and if that meant offside with trade, was a consequence (as those jurisdictions would also be offside)
- Proposed clause - would mirror NY, with respect to intent, but still have to follow the law even if law is different than stated intent
 - Language matters - if says you shall be in compliance, means trade comes first
 - If it is that "we do not intend to contravene...", that is not law, that is intent but not direction
 - If shall - should reference be made specifically WTO GPA
- There is scope to discriminate against a jurisdiction even within WTO GPA (as not all entities are covered)
- If want to mirror exactly
 - Would mean using "shall" for Texas
 - For NY -
 - Could provide for a reciprocal trade agreement exemption, so if entity is seeking to procure and they are covered by WTO GPA

FiP Regs

March-16-18 2:17 PM

Subject	FW: FiP Regs
From	Chiu, Genevieve (CAB)
To	Greenberg, Martha (CAB); Brown, Kelly (CAB)
Sent	March-16-18 11:21 AM
Attachments	 Draft FiP regs.msg

For your reference not for circ

Draft regulations (3 documents)

~
Password= procurement

Draft proclamation (1 document)

Password=legcounsel

Genevieve Chiu
Tel: 416-327-6449
Genevieve.Chiu2@ontario.ca

From: Lawson, Shawn (TBS)
Sent: March 16, 2018 11:17 AM
To: Chiu, Genevieve (CAB); Cameron, Hugo (MIT)
Cc: Walsh, Laura M. (TBS); Walters, Jeffrey (MIT); Duffy, Stephen (TBS); Lo, Tom (TBS)
Subject: RE: FiP Regs

Thanks Genevieve.

Attaching the regs that are currently in development, which should be helpful. Recommend sticking to #1 and #2 in the attachment. Password to follow.

From: Chiu, Genevieve (CAB)
Sent: March 16, 2018 10:50 AM
To: Lawson, Shawn (TBS) <Shawn.Lawson@ontario.ca>; Cameron, Hugo (MIT) <Hugo.Cameron@ontario.ca>
Cc: Walsh, Laura M. (TBS) <Laura.M.Walsh@ontario.ca>; Walters, Jeffrey (MIT) <Jeffrey.Walters@ontario.ca>; Duffy, Stephen (TBS) <Stephen.Duffy@ontario.ca>; Lo, Tom (TBS) <Tom.Lo@ontario.ca>
Subject: FiP Regs

Thanks in advance for sharing any of the latest materials or drafts – will use for reference only and not share further but will be very helpful to pull together the 1pager for the SoC.

Genevieve Chiu
Economic, Environment, Justice and Intergovernmental Policy
Policy and Delivery Division
Cabinet Office
Tel: 416-327-6449
Genevieve.Chiu2@ontario.ca

Buy American One Pager

March-19-18 10:26 AM

Subject	Buy American One Pager
From	Greenberg, Martha (CAB)
To	Orsini, Steve (CAB)
Cc	Bromm, William (CAB); Kwamena, Bofoa (CAB); Davidson, Steven (CAB); Foster, Robert (CAB); Phillips, Shirley (MIT); Angus, Helen (TBS)
Sent	March-17-18 8:30 AM
Attachments	 Comparison Chart NY-Texas-Ont - Final March 16.docx  TPZ - GP - ON Fairness in Procurement regulations - ...

Hi,

I know Gen mentioned yesterday that we had worked up a comparison chart of the NY and Texas regs and Ontario's proposed response against those. The trade element is captured on the second page and third page and as you'll see, there is no confirmed direction but a few options presented. We spoke with PO (Niloo) yesterday to give her a heads up that options were still being discussed which she is supportive of, especially considering the letter received yesterday from the feds (attached).

As you'll see in the chart, there are differences between Texas (who uses the word "shall") vs NY (which uses the word "intended to") – one question to date has come down to should our regs mirror state for state (meaning our regs with respect to trade obligations would be different for NY and Texas). But the issue does mean that in some cases we would not be legally committing in our reg to abide by our trade commitments, even if they are listed as "intended to". The chart provides a new option, which is to include as an exemption the ability for an entity to seek TB approval for an exemption to the procurement rules because there is a trade agreement between the two jurisdictions. On the face of it, this may be an interesting option to pursue but admit in practice, this could result in TB needing to determine whether contravention of trade would occur.

William has also just shared the email from MAG where they say they may not seal the regs given they feel the regs may go outside Ontario's jurisdiction. Not having spoken with them, I would wonder if upon reviewing the options contained in the note, any of the new options would reduce that risk.

We have not yet shared this table with the PO but committed to and I expect it will result in us regrouping with them, TBS, MIT and now I would propose MAG on Monday.

Happy to chat/answer questions anytime. Huge thanks to MIT and TBS who are very actively engaging on this and working as fast as they can!
Thanks,
Martha

Subject	FW: Sealing of Regulations
From	Bromm, William (CAB)
To	Greenberg, Martha (CAB); Foster, Robert (CAB)
Sent	March-17-18 8:01 AM

FYI

Sent with BlackBerry Work (www.blackberry.com)

From: "Orsini, Steve (CAB)" <Steve.Orsini@ontario.ca>
Sent: Mar 17, 2018 7:36 AM
To: "Bromm, William (CAB)" <William.Bromm2@ontario.ca>; "Matela, Angelo (CAB)" <Angelo.Matela@ontario.ca>; "Kwamena, Bofoa (CAB)" <Bofoa.Kwamena@ontario.ca>
Subject: FW: Sealing of Regulations

From: Angus, Helen (TBS)
Sent: Saturday, March 17, 2018 7:36:46 AM (UTC-05:00) Eastern Time (US & Canada)
To: Orsini, Steve (CAB); Phillips, Shirley (MIT); Betzner, Lynn (CAB)
Subject: Sealing of Regulations

Solicitor-client privileged advice is below. I thought you would want to know this. I understand that you both already have the side by side comparing the reg with those of the New York and Texas. If not, I will send along as well.

From: Duffy, Stephen (TBS)
Sent: March 16, 2018 6:20 PM
To: Lawson, Shawn (TBS) <Shawn.Lawson@ontario.ca>
Cc: Hamacher, Nicole (TBS) <Nicole.Hamacher@ontario.ca>; Pauker, Carol (TBS) <Carol.Pauker@ontario.ca>; Hatzis, Len (TBS) <Len.Hatzis@ontario.ca>; Compagnone, Lisa (TBS) <Lisa.Compagnone@ontario.ca>; Richards, Jennifer (TBS) <Jennifer.Richards@ontario.ca>; Lo, Tom (TBS) <Tom.Lo@ontario.ca>
Subject: Sealing of Regulations

Solicitor-client privileged and Confidential

Shawn,

We've been informed by our colleagues in MAG there is a moderately high risk that the Act, as well as the proposed regulations, would be found to be outside Ontario's constitutional jurisdiction as an attempt to regulate the federal field of international trade and commerce rather than the provincial field of provincial public sector procurement. Due to the moderately high risk, the two proposed regulations under the *Fairness in Procurement Act, 2018* will not be sealed by the Office of the Legislative Counsel.

Legislative Counsel's seal is applied to proposed regulations unless, in the judgement of legislative Counsel, there is a substantial risk that a court would strike down the regulation or a major provision of the regulation

The absence of Legislative Counsel's seal does not legally prohibit the government from proceeding with passage of the regulation. Rather, it identifies a moderately high legal risk. The government is free to accept that risk and pass the regulation in its present form.

Regards,
Stephen and Tom

Ministry of the Attorney General | Civil Law Division | Treasury
Board Secretariat
77 Wellesley Street West, 9th Floor, Ferguson Block, Toronto, ON
M7A 1N3

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Buy American - update

March-19-18 8:54 PM

Subject	Buy American - update
From	Greenberg, Martha (CAB)
To	Orsini, Steve (CAB)
Cc	Kwamena, Bofoa (CAB); Davidson, Steven (CAB); Foster, Robert (CAB)
Sent	March-19-18 8:39 PM
Attachments	 GPA Scope FIP March 19 2018 - MIT Legal and Policy.d...  Comparison Chart US versus Ontario - March 19 - Clea...

Hi,

Tomorrow it the briefing you had requested on Buy America/Fairness in Procurement regulations. In advance of that, I wanted to provide you with a bit of an update. First, attached is an updated “one-pager” (although now 3 pages...) just a couple of additions made but not substantially different from what I sent on the weekend.

In addition, we spoke with Nick and Niloo in the PO today. They are very engaged on the challenges of whether you prioritize reciprocal action vs prioritizing trade agreements. I think (my impression) is that they continue to lean towards the priority being reciprocal action, even if that means we aren’t to the letter of the law saying we “shall” abide by our trade agreements (this would lead to using the word “shall” for Texas which is reg option 2 and using the word “intent” for NY which is reg option 1a). The rationale for that of course being, if we did say we shall abide by all our trade agreements, the regs become a bit of a moot point as they have no teeth and therefore doesn’t live up to what the P has been saying.

A question they had, which we have followed up on, is whether there is any procurement that is not governed by the WTO GPA, so if we did say we shall abide by any trade agreement, would that leave any procurement that would be covered by the reg.

The attached provides a general overview of what Ontario procurement could occur under the TX/NY regs without violating the province’s WTO GPA obligations. TBS advises that they don’t have the data to be able to offer assessment based on past or predict future impact or estimate proportion of procurements that would fall into this category. But rather what they’ve provided here is the types of criteria that would have to be met on any given procurement.

It also offers some brief examples of what would constitute a violation of the GPA for ON. Please keep in mind each procurement would need to be assessed on a case-by-case basis to definitively determine whether it is inside/offside our GPA obligations.

MIT & TBS’ analysis focuses on the GPA, given the responsive regulations exclusively concern suppliers from the U.S states. Further, the GPA is the only trade agreement that Canada currently has with the U.S. where provinces/territories and certain U.S. states have procurement commitments (NAFTA’s procurement rules do not apply to PTs/states).

PO is also aware that MAG has stated they would not seal the reg, they have asked to see the legal memo when we have it to understand the issue of jurisdiction better.

TBS and MIT will be at your briefing tomorrow as well to help answer questions and to try to make this muddy water as clear as we can.

Thanks,
Martha

Subject	Sealing of Regulations - Buy America
From	Bromm, William (CAB)
To	Orsini, Steve (CAB); Davidson, Steven (CAB); Greenberg, Martha (CAB); Foster, Robert (CAB); Kwamena, Bofoa (CAB)
Sent	March-20-18 7:58 AM

Below is the summary of the legal assessment of the regulation. It covers more than just the constitutional issue. Note on that point it highlights the need for evidence.

- *Outside of Ontario’s Constitutional Jurisdiction* - There is a **moderately high** risk that the proposed regulations could be found to be outside Ontario’s constitutional jurisdiction as an attempt to regulate the federal field of international trade and commerce rather than the provincial field of provincial public sector procurement.
 - *Outside Authority of the Legislation* – There is a risk that the making of the regulations could be found to be outside the authority of the legislation if there is insufficient evidence for the President of Treasury Board to form the opinion that the New York or Texas “Buy American” legislation could inhibit or prevent Ontario suppliers from participating or succeeding in public procurement processes in those states.
 - *Breach of WTO GPA* – There is a risk that the proposed regulations could breach Ontario’s non-discrimination obligations under the WTO GPA if the regulations target covered procurement activities and impose additional requirements only on suppliers from New York and Texas. **Additionally, there is also a risk that the proposed regulations, which would limit the types of suppliers eligible to participate in certain Ontario procurements, may breach Ontario’s WTO GPA obligations regarding conditions for participation.**
 - *Short Transition Period Increases Risk of Contravening Regulations* – If the period between the making of a regulation and its effective date does not permit sufficient time for the education of, and preparation by, covered entities, there is an increased risk of Ontario entities contravening the regulation. A sufficient time period is needed to update procurement templates and to educate Ontario entities on the unique requirements of the responsive regulations.
 - *Caretaker Convention* - The caretaker principles provide that the government generally only undertakes routine or non-controversial actions during the period from the issuance of the election writs until a new government is established after the election unless the action is so urgent it cannot reasonably wait. The creation or revocation of regulations under the Act or the making of Ministerial orders or other decisions under those regulations during the writ period likely would engage the caretaker principles and consideration would have to be given to whether it is necessary to proceed during the writ period.

*This preliminary legal assessment represents only significant legal risks identified at this time based on the limited facts available. Further refinements to these legal risks and additional legal risks may be identified once further facts become available. For example, if the regulations will apply to broader public sector entities, the risk of void contracts will need to be included. **The Office of Legislative Counsel will not seal a regulation that has a moderately high constitutional law risk and will not seal a regulation if the regulation or a significant portion of it is clearly outside the authority of the legislation.**

Buy America SoC March 20/18

March-20-18

12:15 PM



Comparison Chart US versus Ontario - March 20 clean....

[Link to Outlook item](#)

Notes