



SUBJECT: Procurement By-law

TO: Corporate Services, Strategy, Risk & Accountability Cttee.

FROM: Finance Department

Report Number: F-13-22

Wards Affected: not applicable

File Numbers: 465-00

Date to Committee: January 10, 2022

Date to Council: January 18, 2022

Recommendation:

Approve the updated Procurement By-law, substantially as attached in Appendix A to finance department report F-13-22, in a form satisfactory to the Executive Director of Legal Services & Corporation Counsel.

PURPOSE:

The purpose of this report is to approve a new Procurement By-law which modernizes the existing Procurement By-law (19-2014) by responding to new trade agreements, ensuring relevancy in practice, and adopting a user-friendly form.

Vision to Focus Alignment:

- Support sustainable infrastructure and a resilient environment
- Deliver customer centric services with a focus on efficiency and technology transformation

Background and Discussion:

As required by the Municipal Act (section 270 (1) 3) all municipalities shall maintain and adopt a policy with respect to its procurement of goods and services. The Procurement By-law not only fulfills the City's obligation to the Municipal Act, but also assists in creating ethical, accountable, fair, open and transparent procurement practices, that support the City in the expenditure of annual capital and operational budgets.

Within the City, both Procurement Services and Engineering Services issue competitive bid solicitation documents, relying on strict operational rules to comply with various laws, acts, regulations, trade agreements, and to protect the City from risk. The City's Procurement By-law acts as the foundation for these competitive procurement processes, and for all other City employees who procure lower value goods and services for their individual departments. Centralized procurement activities over the last few years have varied due to the global pandemic, with Procurement Services and Engineering Services completing 71 competitive procurement projects in 2020, and 118 thus far in 2021, while ensuring that the vendor performance management program is maintained.

Additionally, Procurement Services manages vendor record creation and management (in compliance with the recent PCard audit), purchase order and agreement creation, change order approval and processing, cooperative procurements, and over 140 ongoing contracts. All of which have a connection or reliance on the City's Procurement By-law as a usable guide.

The Procurement By-law (19-2014), enacted in 2014, was written to build upon the previous by-law version, while creating transparency and accountability, and fulfilling fiscal responsibility. Though By-law 19-2014 has served the City well in maintaining orderly and transparent centralized and decentralized procurement processes, a review and update was required to ensure relevancy to procurement best practice, and to review spend thresholds in order to create alignment with today's value for money and market conditions. The revised Procurement By-law, which is utilized by both City departments and vendor stakeholders, has also been drafted with usability and clarity at the forefront.

As described above, a fulsome review of the procurement by-law has now been completed, resulting in the revised version proposed in this report.

Strategy/process

The 2022 Procurement By-law has been drafted by the Procurement Services team in conjunction with some of the most frequently serviced departments within the City. Representatives from Legal, EICS, Finance, IT, along with the Internal Auditor, have been consulted and provided the opportunity to review and offer input.

Not only was an internal review done to ensure best practices, a review of neighboring municipal by-laws was also completed to capture and fulfill any gaps in our policy.

Since the enactment of the Procurement By-law in 2014, both the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) and the Canadian Free Trade Agreement (CFTA) have both been introduced in 2017, which are, in general terms, intended to promote open and fair public procurement practices and reduce or

eliminate to the extent possible, barriers to the free movement of persons, goods and services. Although the City has adopted compliance with these agreements in practice, it was important to ensure the updated Procurement By-law was brought into alignment with these agreements to which the City is subject to.

As mentioned above, the creation of a user-friendly By-law was of significant importance. Though the fundamental principles guiding the By-law remain, it has been edited for clarity and readability with a revised layout and schedules.

By-law Layout and Schedules

Appendix A forms the City's entire Procurement Policy, which contains the following Parts and Schedules:

Part 1 – Goals, Definitions and Directives

- Part 1 focuses on the scope, application and objectives of the Procurement policy and identifies the ethics, restrictions and requirements the City encompasses as a public entity.

Part 2 – Roles and Responsibilities

- Part 2 highlights responsibilities within the City's procurement process, which combines both centralized and decentralized procurement which is advised by the value of spend. Competitive procurement roles for both the Manager of Procurement Services and the Manager of Design and Construction are clearly defined, along with Director responsibilities that can be delegated.

Part 3 – Procurement Process

- Part 3 lays out important details that guide procurement methods, process requirements and vendor management.

Schedule A – Procurement Method and Approval Authority

- This is the foundation for organizational approval based on procurement method, spend and approval authority.

Schedule B – Bid Irregularities

- This schedule identifies potential bid irregularities, both major and minor, and how they will be handled, which greatly depends on the severity of the irregularity.

Schedule C – Procurement Policy Exemptions

- This schedule defines specific situations where a competitive procurement process is not required due to market specific conditions, confidentiality, or other situations where best value cannot be obtained through a competitive procurement process.

Schedule D – Non-Competitive Procurement

- This schedule identifies specific instances where non-competitive procurements are allowable. These allowable non-competitive situations typically rely on unique situations whereby goods are available from only one supplier, or other various rationale that creates incompatibility with a competitive process.

Notable Edits

The most notable edits in the 2022 By-law update are described below, relaying specific details on changes, along with a brief explanation of why these changes are required.

1. Compliance to CETA/CFTA

In order to comply with both CETA and CFTA, as required by the federal government, Executive Override, which was previously allowable, has been removed from the By-law. Although this may seem like a significant change, the autonomy to procure in unusual or dire situations remains available through the use of a Non-Competitive Procurement, or Emergency Procurement methods.

As required by the agreements, a full disclosure approach has been incorporated with respect to City participation in other agencies competitive procurements or contracts. A list of current and potential partners is posted and frequently updated on the City's procurement webpage, to ensure vendors have the opportunity to bid on City work, not only through City issued bid solicitations, but also through all of the City's cooperative procurement partners.

Additionally, compliance to the trade agreements through appropriate bid advertising and advertising timelines is maintained and encouraged both in policy and procedure.

2. Electronic Bidding

In 2018 a modernization of the City's bidding process was undertaken by engaging with the eProcurement platform provider bids&tenders. A removal of paper-based bidding occurred, and the City shifted to electronic bidding with bids&tenders. The City now posts, reviews and evaluates bids electronically, keeping with a dedication to efficiency, green procurement and transparency in process. The 2022 By-law references and aligns to the practice of electronic bidding.

3. Over Budget Bids

This By-law allows the CFO to approve over budget bids, under specific circumstances and thresholds. Previously, all over budget bids required Council reporting, with reliance on finance to ensure funding abilities. To create a more user-friendly process in these routine approvals, which are already guided by budget availability, the CFO may approve Operating Budget items when over budget,

pending reallocation can be made without impact to existing service delivery. Additionally, Capital Budget items may be considered when over budget upon approvals from the CFO and Executive Director of EICS, where additional capital funding requirements are up to 10% or \$250,000 of the original Capital Budget, whichever amount is lesser and capital reserve funds or open capital orders with sufficient funding exists. A summary of over budget bids will be included in the annual report to Council. It should be further noted that section 22 of the by-law requires a report to Council when deemed in the best interest of the City, at the discretion of the Manager of Procurement Services, the City Manager or Council, irrespective of the value of the Contract.

4. Council Break Approvals

In order to ensure business continuity, language has been added to the by-law to allow the award of bids over 5 million dollars where extended council breaks occur (more than 25 days, excluding weekends and statutory holidays), pending the project is within the approved budget or with approval from the CFO, up to 10% or \$250,000 whichever is less, above allowable budget.

Financial Matters:

Although there is no direct financial impact to the City, this By-law does establish Procurement Process requirements based on estimated spend thresholds. After reviewing our current thresholds against neighboring municipalities, and considering economic inflation over time, it was determined that the previously established thresholds found within the 2014 By-law were financially dated.

The decentralization of lower value, one-time procurements, with an estimated spend of up to \$50,000 allows efficiencies within the procurement process. It is also typical that lower spend items equate to lower risk to the City, though we add an additional layer of protection by ensuring that all director delegated staff who perform City procurements have completed the online Procurement 101 training.

The following outlines the financial threshold changes that have been implemented through the revised Procurement By-law:

Procurement Method	2014 By-Law Limits	2022 By-Law Limits
Direct Purchase/No Competitive Procurement required	Up to and including \$5,000	Up to and including \$10,000
Department's Authority to obtain Quotations (RFQ) or to utilize Non-Competitive	\$5,000 up to and including \$25,000	Greater than \$10,000 up to and including \$50,000

procurement methods with Director Authorization		
Formal Competitive Procurement (RFT, RFP)	Greater than \$25,000	Greater than \$50,000
Non-Competitive Procurement	Greater than \$25,000 and less than \$100,000, Manager of Procurement Services may Approve, over \$100,000 a Report to Council is required.	Greater than \$50,000 and less than \$100,000, Manager of Procurement Services may Approve, \$100,000 and greater a Report to Council is required

Climate Implications

The Procurement Services section strives to ensure climate considerations are injected into our operations wherever possible. We operate in alignment with the Green Procurement Policy (Report Number: F-36-11) and work towards sustainability through our procurement processes, as applicable.

Engagement Matters:

As previously noted, representatives from Legal, EICS, Finance, IT, along with the Internal Auditor, were consulted and provided the opportunity to review and offer input to the revised Procurement By-law.

Conclusion:

The revised Procurement By-law will create a modernized, efficient and clear approach to Procurement activities within the City, while maintaining open, fair and transparent operations. This report requests Council approval to enact the revised Procurement By-law.

Respectfully submitted,

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Appendices:

A. Procurement By-law

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.