

## Appendix 3

### Summary of Proposed New Procurement By-law

---

#### Background:

Materiel Management, Legal Services and Internal Audit reviewed the Purchasing By-law No. 374-2006, as amended. The objectives of the review were to update and modernize the By-law, using plain language, point form and avoiding duplication. Emphasis was on keeping the By-law fairly general and flexible with procedural details removed to separate policies, where possible. The result is effectively a new By-law.

#### Spend Thresholds:

Staff recommend that the LVA limit be increased from \$10,000 to \$25,000. This increase will give staff greater autonomy to make basic purchases. A review of purchases between \$10,000 and \$25,000 indicated that risk at this level remains low. LVA spending is monitored regularly for compliance and opportunities for strategic procurement. This will require an update to the City's Payment Requests Policy and Pcard Policy which cover non-purchase order payments.

The thresholds for Medium Value Acquisitions (MVA = \$25,001 to \$100,000) and High Value Acquisitions (HVA = more than \$100,000) are unchanged. HVA aligns with the Canadian Free Trade Agreement (CFTA) and the Comprehensive Economic and Trade Agreement (CETA):

The table below summarizes the hi-lights of the new By-law:

Section No. and Subject		Comments
1	Definitions	<p><u>Changed definitions:</u></p> <ul style="list-style-type: none"> <li>• Purchasing By-law now Procurement By-law</li> <li>• Purchasing Agent now Chief Procurement Officer</li> <li>• Commitment now Contract</li> <li>• Acquisition now Procurement</li> <li>• Vendor now Supplier</li> <li>• Materiel Management now Procurement Services</li> <li>• LVA now requires IT manager approval for applications, software and subscriptions</li> <li>• The acronyms for LVA, MVA and HVA were not changed (even though we are recommending using procurement as the consistent term over acquisition) as they are ingrained in the City's vocabulary.</li> </ul>

		<p><u>New definitions:</u></p> <p><b>“City-wide Contracts”</b> means contracts for Goods and/or Services that are used by most or all City departments for which Procurement Services conducts the procurement processes and manages the contracts.</p> <p><b>“Contract Manager”</b> means a City employee to whom the Departmental Director has delegated Procurement process responsibility and/or Contract management responsibility.</p> <p>This was undefined previously. This definition, plus other references to responsibilities in the By-law are to clarify the differences between the CM and buyer and allocate accountability for the CM role.</p> <p><b>“Fixed Term”</b> means the specific term applied to a Contract for regularly required Goods and/or Services, such as maintenance services, office supplies and other commonly used Goods.</p> <p>Applying an appropriate fixed term to the types of contracts described is recommended for the following reasons:</p> <ul style="list-style-type: none"> <li>• These contracts often provide for renewal, i.e. a firm initial term of three years, subject to renewal for 2-3 additional one year terms. The contracts are almost always extended to the maximum, indicating that a term of 5 or 6 years in the first place would have been appropriate</li> <li>• Administratively efficient rather than processing paperwork for re-approval and issuing change orders each year</li> <li>• We don’t know that extension year pricing is good, and the market may have changed with new suppliers and products</li> <li>• Bidders bid on the sure thing – i.e. three years - extension years are a bonus to them and we may be overpaying</li> <li>• Incumbent suppliers know that the contract will likely be extended. They can risk bidding lower and recoup later; new bidders don’t have the same info – not really fair</li> <li>• Re-bidding is easier and more reliable than benchmarking</li> <li>• Interim extension will still be available if needed</li> </ul>
--	--	--

		<ul style="list-style-type: none"> <li>• If a case can be made for extending and not re-bidding, Council approval is required</li> </ul> <p>This would apply to contracts issued under the new by-law and not affect contracts currently in place with renewal clauses.</p> <p>Other new definitions related to the Procurement Centre:</p> <ul style="list-style-type: none"> <li>• Procurement Request Form (PRF)</li> <li>• Procurement Authorization Form (PAR)</li> </ul>
2	Monetary References	<p>Updated:</p> <p>All references to dollar amounts in this By-law are to be in Canadian or US dollars and do not include applicable taxes.</p>
3	Applicability	<p>Three new items were added as exclusions:</p> <ul style="list-style-type: none"> <li>• performers for public events hosted and/or produced and/or sponsored by the City at its public event venues; (removed from Schedule “A”)</li> <li>• lodging and associated meals and services from hotels or similar providers of accommodations for members of the public who are participating in City hosted and/or sponsored sporting and/or tourism events, such as the Ontario Summer Games, as required under the terms and conditions of the agreement between the City and the event owner;</li> <li>• services provided by representatives from Indigenous communities to attend on City project sites for observation purposes during invasive site testing or construction;</li> </ul> <p>The following exclusion was revised, for clarity:</p> <ul style="list-style-type: none"> <li>• Procurement, installation, inventory maintenance, de-accessioning and disposal of City acquired art, including interactive, artistic and/or place making installations.</li> </ul>
5	Ethical Conduct of Bidder and Suppliers	New section to address collusion, influence, conflicts of interest etc. for Bidders and suppliers.
6	Conflicts of Interest	Three new items were added:

		<ul style="list-style-type: none"> <li>• Employees of the City shall comply with City policies on conflict of interest</li> <li>• City employees must immediately declare to their manager any real or perceived conflicts of interest they may have arising from interacting with, managing, supervising or overseeing the work of family members and/or former employees of the City and/or anyone with whom they have a close personal relationship working for Suppliers in any capacity.</li> <li>• City employees in the role of Contract Manager must be and be seen to be impartial in their treatment of all Bidders and Suppliers, and in managing Contracts and approving payments</li> </ul>
9	Authorities, Responsibilities and Duties	<p>New section:</p> <p><b>(1)</b> The authorities of the Chief Procurement Officer and general responsibilities and duties for staff having a role in Procurement processes are set out in Schedule “D” to this By-law.</p> <p>Streamlined to keep related information in one place for easy reference and to avoid duplication.</p>
10	Planning for Procurement	<p>Added:</p> <p>(g) at the Department Head’s discretion and prior to Procurement, report to Council significant changes affecting existing service levels and/or service delivery approaches for High Value Acquisitions.</p>
14	Authority to Approve Awards	New section. Discusses approval requirements in one section and in point form by department, Procurement Services and Council.
15	Authority to Execute Contracts	New section. Discusses contract execution requirements in one section.
16	Cancelling and Re-issuing Bid Requests	Replaced by new policy # 03-06-11 “Bidding Procedures for Publicly Advertised HVA”. Refers reader to policy.
19	Receipt and Opening of Bids	Replaced by new policy # 03-06-11 “Bidding Procedures for Publicly Advertised HVA”. Refers reader to policy.
20	Amendments, Interim Extensions, Renewals and Terminations	Formerly section 18. To be replaced by new policy. Refers reader to policy which is more prescriptive in addressing amendments.

23	Disqualification of Bidders	<p>Revised:</p> <ul style="list-style-type: none"> <li>The disqualification period will be for up to five years from written notification to the Bidder.</li> </ul> <p>The disqualification period was increased from two years to up to five years, depending on the gravity of the reason for disqualification.</p>
26	Disposition of Surplus Assets	<p>Replaced by new policy # 03-06-10 "Disposal of Surplus City Assets". Refers reader to policy.</p>
	Schedule "A" Single Source and Emergency Procurement	<p>Revised:</p> <ul style="list-style-type: none"> <li>Single source only – term "sole" source is no longer used</li> </ul> <p>(vii) changed: It is advantageous to the City to acquire the Goods and/or Services from a supplier pursuant to the <u>competitive</u> Procurement process conducted by another Public Body;</p> <p>(iii) The confidential nature of the requirement is such that that it would not be in the public interest to solicit competitive bids, replaced with:</p> <p>There is a need to limit the distribution of confidential or security related information.</p> <p>(iv)...Bids not economical to the City... replaced with:</p> <ul style="list-style-type: none"> <li>For additional Goods and/or Services from the original Supplier that were not included in the original Procurement if the change of Supplier for such additional Goods and/or Services cannot be made for: <ul style="list-style-type: none"> <li>Economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial Procurement; and</li> <li>Would cause significant inconvenience or substantial duplication of costs for the City.</li> </ul> </li> </ul> <p>Aligns with trade agreements.</p> <p>Deleted:</p> <p>(v) Construction, renovation, repairs....to a building lease by the City may only be done by the lessor of the building in accordance with the lease agreement.</p>

		<p>This is not required as it is covered in individual leases; we don't retain the service.</p> <p>(xvi) Funding and project completion timelines imposed by senior government programs do not allow adequate time for a competitive bid process.</p> <p>This does not align with the trade agreements. In these situations, we would pre-qualify contractors and consultants or use roster suppliers, or obtain Council approval for single sourcing.</p>
	Schedule "B"	<p>Revised to provide for Departmental Directors to approve competitive procurements up to \$500,000.</p> <p>Currently Department Heads approve all competitive procurements at more than \$100,000. This change aligns with Schedule "C" Legal Review Requirements, which considers procurements over \$500,000 to be higher risk.</p>
	Schedule "D" Authorities, Responsibilities and Duties of Staff	<p>New schedule.</p> <p>The schedule describes the authorities and general responsibilities and duties for staff having a role in Procurement processes. Additional and/or more detailed responsibilities may also be included in related corporate policies and procedures.</p>