

City of Mississauga
Corporate Report



<p>Date: November 15, 2021</p> <p>To: Chair and Members of General Committee</p>	<p>Originator's files:</p>
<p>From: Shari Lichterman, CPA, CMA, Commissioner of Corporate Services and Chief Financial Officer</p>	<p>Meeting date: December 1, 2021</p>

Subject

New Procurement By-law and New Corporate Policy – Contract Amendments and Terminations

Recommendation

1. That the report dated November 15, 2021 titled “New Procurement By-Law and New Corporate Policy – Contract Amendments and Terminations” from the Commissioner of Corporate Services and Chief Financial Officer be received.
2. That the New Procurement By-law governing the City’s procurement of goods and services be enacted, effective March 1, 2022.
3. That the existing Purchasing By-Law # 374-2006, as amended, be repealed effective March 1, 2022.
4. That the draft Corporate Policy – Contracts Amendments and Terminations be approved.

Executive Summary

- Materiel Management, Legal Services and Internal Audit have developed a new Procurement By-law in consultation with the Extended Leadership Team. The new By-law is general with procedural details removed to policy where possible.
- A new, separate Corporate Policy - Contract Amendments and Terminations (Section 18 of the current By-law) addresses procedures, role clarity and accountabilities in detail.
- The Leadership Team endorsed the new By-law and Policy on November 4, 2021.
- Staff recommend increasing the Low Value Acquisition (LVA) limit from \$10,000 to \$25,000. Most LVA is low risk. Specific training and resources will be available for higher risk LVA, including labour services and construction. LVA is regularly monitored for compliance and strategic procurement opportunities. The thresholds for Medium Value Acquisition (MVA = up to \$100,000) and High Value Acquisition (HVA = more than \$100,000) are unchanged. HVA aligns with the Canadian Free Trade Agreement (CFTA) and the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union.

- Contract management is an important role; the new By-law defines the role and responsibilities.
- New Section 5 - Ethical Conduct by Bidders and Suppliers addresses collusion, influence and conflicts for bidders and suppliers.
- Section 6 – Conflicts of Interest (internal) was strengthened in response to recent internal audits.
- Section 9 – Authorities, Responsibilities and Duties directs readers to Schedule “D”, a new schedule that consolidates all of the general roles and responsibilities in procurement processes in one place.
- Section 10 – Planning for Procurement includes engaging Council in advance of procurement if significant changes are made, where relevant.
- Schedule “B” Award Approval and Contract Execution Authority was revised to allow Departmental Directors to approve competitive procurements up to \$500,000. 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.
- Changing the section name from Materiel Management to Procurement Services and changing the title of Purchasing Agent to Chief Procurement Officer are in keeping with modern terminology.
- On Council approval, the new By-law and Policy will become effective on March 1, 2022 and rolled out to staff through WebEx training and presentations.
- Council occasionally raises the subject of local preference. In Ontario, the *Discriminatory Business Practices Act* does not allow preference based on the location of persons or businesses. The trade agreements (CETA and CFTA) further limit the ability to give local preferences in procurement.
- For publicly advertised High Value Acquisitions, staff have no ability to specify local or Canadian made products. Staff obtain quotations for MVA goods and services locally where possible.
- An update to the Sustainable Procurement Policy in 2022 will include approaches for MVA and LVA for local procurement where possible and address social procurement matters such as supplier diversity and inclusion.
- A Summary of the proposed new Procurement By-law is Appendix 3 to this report.

Background

The City’s Procurement By-law aligns with procurement law and best practices for public procurement and is the official rules for the City’s procurement of goods and services. Several relevant policies support the By-law. Together, these documents are important to ensure good governance, best value and compliance with legislation and trade agreements.

The current By-law was implemented in 2006 with updates as required. Materiel Management, Legal Services and Internal Audit reviewed the By-law with the objectives of updating and modernizing it, using plain language, point form and avoiding duplication of information. Emphasis was on keeping the By-law general, with procedural details removed to separate policies, where possible. The proposed new Procurement By-law is Appendix 1 to this report.

Section 18 of the current By-law, “Amendments, Interim Extensions, Renewals & Terminations” required substantially more procedural details and was removed to a separate policy. The Policy also provides role clarity and strengthens accountability. A draft of the new Corporate Policy – Contract Amendments and Terminations is Appendix 2 to this report.

Comments

Highlights of the new By-law include:

By-law Spend Thresholds

Staff recommend increasing the Low Value Acquisition (LVA) limit from \$10,000 to \$25,000. This increase will give staff greater autonomy to make basic purchases. Most LVA is low risk. Specific training and resources will be available for higher risk LVA, including labour services and construction. LVA is regularly monitored for compliance and strategic procurement opportunities.

The thresholds for Medium Value Acquisition (MVA = up to \$100,000) and High Value Acquisition (HVA = more than \$100,000) are unchanged. HVA aligns with the trade agreements.

New Definitions:

“**Contract Manager**” means a City employee to whom the Departmental Director has delegated Procurement process responsibility and/or Contract management responsibility.

This role was previously undefined. This definition, plus other references to responsibilities in the By-law clarifies the differences between the contract manager and buyer roles and allocates accountability for the contract manager role.

“**Fixed Term**” 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.

Currently these types of contracts provide for multiple extension years beyond the initial term. Most contracts are extended year by year to the maximum, indicating that the estimated possible term was appropriate. In the extension years, best value becomes difficult to verify. Applying an appropriate fixed term to the types of contracts described provides for full disclosure to bidders, administrative efficiency, and improves procurement planning and workload balancing.

New Section**Section 5 - Ethical Conduct by Bidders and Suppliers**

This section addresses collusion, influence and conflicts for bidders and suppliers.

In addition, Section 6 – Conflicts of Interest (internal) was strengthened in response to recent internal audits.

New Schedule**Schedule “D” Authorities, Responsibilities and Duties of Staff**

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.

Amended Schedule**Schedule “A” Single Source and Emergency Procurement**Revised

- The term “single source” only (not sole source) to define non-competitive procurements
- Criterion (iv)...Bids not economical to the City... has been replaced with the following language from the trade agreements:

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:

- Economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial Procurement; and
- Would cause significant inconvenience or substantial duplication of costs for the City.

Deleted

The following criterion does not align with the trade agreements and has been deleted.

- (xvi) Funding and project completion timelines imposed by senior government programs do not allow adequate time for a competitive bid process.

In these situations, contractors and consultants would be pre-qualified or roster suppliers would be used. Council approval for single sourcing will be obtained should it not be possible to pre-qualify or use roster suppliers.

Changes to Terms and Processes in Bid Requests

Planning for Procurement (Section 10) includes the following: (g) At the Department Head’s discretion and prior to procurement, report to Council significant changes affecting existing services levels and/or service delivery approaches for High Value Acquisitions.

Terminology Changes

Changing the section name from Materiel Management to Procurement Services and changing the title of Purchasing Agent to Chief Procurement Officer are in keeping with modern terminology.

Trade Agreements

The Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union (EU) and the Canadian Free Trade Agreement (CFTA) both came into effect in September 2017. CETA is the first international trade agreement in which municipal procurement is covered. The objectives of the government procurement obligations within these trade agreements are to ensure fairness and increase competition.

CETA and CFTA generally prohibit any form of discrimination in favour of local or national suppliers and strictly prohibit any consideration of local benefits in contracting decisions. Very limited exemptions are identified in the trade agreements which permit single source procurements.

The City posts notices of competitive procurements in accordance with the trade agreements thresholds and the City embraces the principles of open, fair competition. In the event of a contravention – such as where a municipality makes a single source procurement not identified as an exemption in the trade agreements – the risks include challenge by other suppliers as well as reputational damage to the municipality.

Since CETA came into effect, no European bidders have requested bidding documents or submitted bids to the City.

Local Preference

In addition to the prohibition against local preference in CETA and CFTA, the Ontario *Discriminatory Business Practices Act* prohibits discrimination based on geographical location of persons employed in or engaging in business. Subsection 9(1) provides that: “A person who incurs loss or damage as a result of an act that is a contravention of this Act has the right to compensation for the loss or damage and to punitive or exemplary damages from the person who committed the contravention.”

In publicly advertised High Value Acquisition processes, staff have no ability to specify local or Canadian made products. Staff obtain quotations for MVA goods and services locally where possible, the details of which should reside in the Sustainable Procurement Policy. An update to the Sustainable Procurement Policy in 2022 will include approaches for MVA and LVA local procurement where possible and address social procurement matters such as supplier diversity. A Summary of the proposed new Procurement By-law is Appendix 3 to this report.

Financial Impact

There are no financial impacts resulting from the Recommendations in this report.

Conclusion

Material Management, Legal Services and Internal Audit collaborated to develop a new Procurement By-law. The new By-law is general with procedural details removed to policy where possible. A new, separate Corporate Policy - Contract Amendments and Terminations (Section 18 of the current By-law) addresses procedures, role clarity and accountabilities in detail. An update to the Sustainable Procurement Policy in 2022 will include approaches for MVA and LVA for local procurement where possible and address social procurement matters such as supplier diversity and inclusion.

A Summary of the proposed new Procurement By-law is Appendix 3 to this report.

The Leadership Team at their meeting of November 4, 2021 endorsed the new Procurement By-law and new Policy.

Attachments

Appendix 1: Draft new Procurement By-law

Appendix 2: Draft new Corporate Policy – Contract Amendments and Terminations

Appendix 3: Summary of Proposed New Procurement By-law



Shari Lichterman, CPA, CMA, Commissioner of Corporate Services and Chief Financial Officer

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