

City of Mississauga  
**Corporate Report**



<p>Date: August 31, 2023</p> <p>To: Chair and Members of General Committee</p>	<p>Originator's files:</p>
<p>From: Raj Sheth, P.Eng, Commissioner of Corporate Services</p>	<p>Meeting date: September 20, 2023</p>

## Subject

**Amendment to Procurement Bylaw 0013-2022**

## Recommendation

1. That the report from the Commissioner of Corporate Services dated August 31, 2023 entitled "Amendment to Procurement Bylaw 0013-2022" be approved.
2. That a by-law be enacted to amend the Procurement By-law 0013-2022, to implement the recommended revisions outlined in the report from the Commissioner of Corporate Services, dated August 31, 2023 entitled "Amendment to Procurement Bylaw 0013-2022".
3. That all necessary by-laws be enacted.

## Executive Summary

- Public procurement law permits the use of collaborative purchasing within the public sector.
- City staff have identified various Buying Group and Public Body agreements available for use that all comply with the rules and regulations around public procurement.
- City staff have identified numerous planned projects that can benefit from acquiring Goods and/or Services from a Supplier pursuant to a competitive procurement process conducted by a Buying Group and/or Public Body.
- City staff recommend the implementation of changes to the Procurement By-law to ensure clarity and transparency related to the City's ability to enter into agreements pursuant to a competitive procurement process conducted by a Buying Group or Public Body. Currently, City staff can enter into such agreements for Section 22 co-operative procurements without going to Council in every instance, however, there is contradictory language within Schedule A: Criteria for Single Source and Emergency Procurement that indicates Council approval is required.

- All HVA procurement activities, including HVAs awarded under Section 22 Co-operative Procurements, are posted externally on the City's website for public disclosure.

## Background

In 2017, with the introduction of the Canada-Free Trade Agreement (CFTA), Buying Groups became an identified means for leveraging group-buying power across all public sector entities.

A Buying Group refers to a group of two or more members that combine the purchasing requirements and activities of the members of the group into one joint procurement process. Buying Groups include cooperative arrangements in which individual members administer the procurement function for specific contracts for the group, and more formal corporate arrangements in which the buying group administers procurement for group members. Buying groups may consist of a variety of entities, including any combination of procuring entities, private sector entities, or not-for-profit organizations.

Some examples of Buying Group agreements available are: winter maintenance equipment, software licensing, ice rink equipment, aggregate supply, fuel, fleet management services, uniforms etc.

In addition to the use of a Buying Group, there are several opportunities to execute agreements with suppliers pursuant to a competitive procurement process conducted by another Public Body. In order to leverage such agreements, the procurement process conducted by the Public Body must stipulate that the same goods and/or services be made available to other Public Bodies at the same price or better and in accordance with the same terms and conditions.

The City's Procurement Bylaw 0013-2022 currently includes a provision for Co-operative Procurement under Section 22, as well as a criteria for single source procurement within Schedule A. The provisions included in the Bylaw are contradictory and provide ambiguity in their interpretation. While Section 22 of the Bylaw identifies the use of Co-operative Procurements as a competitive bid process, Schedule A includes the use of Co-operative Procurements as a single source. This report is seeking approval to amend the Procurement Bylaw to be clear in the City's intention to participate in agreements with a supplier pursuant to a competitive procurement process conducted by a Buying Group or Public Body.

## Comments

### Current By-law Provisions:

Under the current Procurement By-law, the City may participate in Co-operative Procurements with another Public Body under certain circumstances (Section 22), which procurements do not require Council approval. Section 22 Co-operative Procurements are not treated as single source procurements.

Schedule “A” (1)(j) currently operates to treat the purchase of Goods and/or Services from a Supplier pursuant to the competitive procurement process conducted by another Public Body as a single source procurements, and such Schedule “A”(1)(j) procurements require Council approval in every instance. The wording for such Schedule “A” (1)(j) procurements could be interpreted to be included under Section 22 procurements, creating ambiguity in the processes for entering into agreements with public bodies.

The recommended revisions to the Procurement By-law will:

- clarify the processes for engaging with Buying Group or Public Body procurements to continue to support the City’s co-operative procurement opportunities
- ensure award approval and contract execution authority for Buying Group Procurements and Procurements conducted by a Public Body are in accordance with “Schedule B” (Award Approval and Contract Execution Authority)
- ensure Procurement Services will review the entity’s bid documents and be satisfied that the entity’s Procurement process is in substantial compliance with the Procurement By-law, is conducted in a fair, open and transparent process, and broadly captures the City’s needs, and
- ensure Legal Services will continue to review contracts for Buying Group Procurements and Procurements conducted by a Public Body and in accordance with “Schedule C” (Legal Review Requirements)

Recommended changes to the Procurement By-law:

- That a new definition for “Buying Group”, as outlined in this report and which incorporates participation in co-operative procurements, be added to the Procurement By-law.
- That the definition of “Co-operative Procurement” in the Procurement By-law be updated to include Buying Groups.
- That Section 22 of the Procurement By-law be updated to outline that:

The City may execute agreements with Suppliers pursuant to a competitive bid process conducted by a Buying Group or Public Body where:

- the agreement would result in a better value or lower cost for the City;
- the Procurement process contemplated the City’s participation (either explicitly by name or implicitly as a member of the Buying Group); and
- the Procurement process conducted and subsequent contract are in substantial compliance with the provisions of this By-law.

Where the City is conducting the Procurement on behalf of a Buying Group, the Procurement process will be conducted in accordance with this Bylaw;

The award approval and contract execution authority for Buying Group Procurements and Procurements conducted by a Public Body, where the Procurement was issued by another entity, shall be authorized in accordance with “Schedule B” and all other applicable City policies.

The Legal Services Division shall be consulted to determine the appropriate agreements required to conduct such Procurements.

- That Schedule A (1) (j) be deleted from the Procurement By-law.

## Financial Impact

There is no additional financial impact resulting from the recommendations in this report. All costs associated with an agreement entered as a result of a procurement process conducted by a Buying Group or Public Body are in accordance with approved budget for the Goods and/or Services being procured.

In accordance with Section 27 of the Procurement By-law, all HVA procurement activities are posted externally on the City’s website for public disclosure. This would include all HVAs awarded under Section 22.

## Conclusion

The ability to enter into agreements pursuant to a competitive procurement process conducted by a Buying Group or Public Body will provide cost savings, resource efficiencies, reduce procurement cycle times, and will allow the City to continue to build strong supplier relationships, while at the same time ensuring that the City is undertaking its due diligence related to open, fair and transparent procurement.



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Raj Sheth, P.Eng, Commissioner of Corporate Services

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