
Subject: Responses to Councillor Information Requests (PAC)

Report to: Procurement Advisory Committee

Report date: Monday, March 8, 2021

Recommendations

1. That Report PAC-C 2-2021 **BE RECEIVED** for information.

Key Facts

- This report provides response to Councillor Information Requests communicated at the November 16, 2020, Procurement Advisory Committee Open Session.
- Councillor Information Requests communicated at the September 14, 2020, Procurement Advisory Committee Open Session were provided via email on September 30, 2020.
- Procurement remains committed to improving service delivery and driving efficiency through the implementation of the initiatives outlines herein, which support successful outcomes for Regional projects.

Financial Considerations

Procurement and its related activities are critical in maintaining taxpayer affordability.

Analysis

This report provides responses to Councillor Information Requests communicated at the November 16, 2020 Procurement Advisory Committee Open Session, specifically PAC 2-2020 minute item:

6: Consent items for Information

- Provide information respecting best practices regarding the distribution of scoring information for Request for Proposal (RFP) results. Councillor Huson.
- Provide information respecting the appeal process for bidders. Councillor Huson.

A. Provide information respecting best practices regarding the distribution of scoring information for Request for Proposal (RFP) results.

Response: An informal survey request was sent out to the executive committee of the Niagara Public Purchasing Committee (public sector agencies/educational institutions) and select Regional Governments in Ontario. The survey sought responses and comments as to the reported recommendations to award the outcome of an RFP process to their Board, Committee or Council.

The informal survey posed the following question as to which of the options identified below were predominantly utilized by the Agency. Option:

1. NAME the compliant submission who achieved the highest score based on the combination of technical and financial evaluation.
 - a. State the value of their financial submission
 - b. Do not name the other Proponents, their score or their financials
2. NAME the compliant submission who achieved the highest score based on the combination of technical and financial evaluation.
 - a. State the value of their financial submission
 - b. Provide a list the final scores of all other Proponents. (total score – Technical and financial – **points only**)
 - c. Do not name the other Proponents actual financial bid amounts, unless so directed by Council.
3. If the process used at your Agency is neither of the above, please provide details including any supporting documents (procedures, Reference to By-law). These results are reported in the “Other” category in Table 1

Survey Results: Of the 21 requests for response, Procurement received a response rate of 100% from the Regional Governments (total of 6 requests) and 40% from the Niagara Public Procurement Committee (total of 15 requests).

The results are summarized in the Table 1 (below).

TABLE 1: Survey Results on Reporting for Request for Proposal (RFP)

Agency	Option 1	Option 2	Other
Regional	2	1	2
NPPC	2	2	2
Total	4	3	4

The other category represents varying combinations of reporting including:

- Full disclosure of each Proponents individual technical and financial scores including costs;
- A variation of the above except that a ranking is provided in lieu of actual scores; and
- Another typically reports the name and financial cost of the top-ranked Proponent and then lists the names of the other Proponents and a range of their total scores (no costs).

Based on previous discussions with colleagues on this topic, Procurement is not surprised that the results of this informal survey would yield a varied response. In anticipation of this, Procurement engaged an external legal firm based in Toronto (the Procurement Office) who specializes in public procurement related matters. Their assignment was to provide legal advice on best practices in municipal procurement related to what information about the results of the Request for Proposal (“RFP”) process should be reported to Regional Council when seeking approval to award the contract to the top-ranked Proponent. On November 9, 2020, Niagara Region Procurement received their response, which is provided as Confidential Appendix 1 by reason of the fact that it provides legal advice that is subject to solicitor-client privilege.

Staff recommend that reports to Council seeking approval to award a contract to the top-ranked proponent pursuant to an RFP process only include:

1. The name of the recommended Proponent;

2. Confirmation that the Proponent has met all mandatory requirements, was evaluated in accordance with the criteria stated within the RFP document and was deemed to be the highest ranked Proponent;
3. The value of their financial proposal submission; and alternatively
4. Some procurement process information, such as the contract term, RFP issue date, closing date and, if necessary, the number of compliant proposals received.

Procurement will consider any amendments required to the Procurement By-law in this regard as a part of approved Work Plan Initiative 1: Procurement By-law amendments which is scheduled for Q3-2021. (PAC-C 1-2021).

B. Provide information respecting the appeal process for bidders.

The Dispute Resolution process, as outlined in Section 30 of the Procurement By-law was the subject of considerable review and investigation by Procurement including a comprehensive review of other municipal Procurement By-laws. The proposed amendments to Section 30 stemming from that consultation were reviewed internally by Legal and Court Services prior to presenting the recommended change to Corporate Service Committee (among other changes including Negotiated RFP and Trade Treaty Legislation) for their endorsement. With Committee approval, Regional Council approved the changes with an effective date of February 28, 2019. Since the change, a minimal number of dispute requests have been received, and all have been actioned and successfully resolved in accordance with the timelines outlined in the By-law.

In response to the Councillor Information Request from the November 16, 2020, Procurement Advisory Committee, Procurement went back out to informally survey Procurement colleagues from other Regional and larger Public Sector Agencies.

Procurement received a response rate of 100% from the Regional Governments and larger municipalities (7) to the following questions as presented below:

1. Do you have separate procedures for Pre and Post award?

With the exception of one respondent, no other informally surveyed municipalities have separate procedures for Pre and Post Award.

When the process was conducted in 2019, there were other municipalities which had separate procedures for Pre and Post Award; some of those agencies were not surveyed for this report. Given the changes in trade treaty legislation at that time

(CETA/CFTA), Procurement viewed the separation of bid dispute into Pre and Post award as being more aligned with the legislation.

2. Is Procurement the overseer of the dispute process or if not, who is?

With the exception of one respondent who noted Legal, all other municipalities affirmed that Procurement manages their dispute process.

Of note, the process outlined in Section 30 of the Procurement By-law does include Legal along with the Commissioner of Corporate Services when the vendors seek to escalate the dispute beyond the Director of Procurement & Strategic Acquisitions. Of note, one Agency advised that in a post award situation, the decision is made by a Senior Leader within the Agency who was not involved in original decision. This level of escalation aligns with the process outlined in Section 30.

Procurement will give due consideration to the feedback from this latest survey as part of approved Work Plan Initiative 1: Procurement By-law amendments which is scheduled for Q3-2021. (PAC-C 1-2021). Preliminary considerations will include but not be limited to validating the need for a continued separation of Pre and Post Disputes in addition to removing the procedural content from the By-law and posting it separately on the Niagara Region Procurement webpage.

Alternatives Reviewed

None, other than the Committee could recommend follow up actions pursuant to any ensuing discussions on the topics outlined herein.

Relationship to Council Strategic Priorities

While Procurement & Strategic Acquisitions and its related activities align with many of Council's 2019-2022 Strategic Priorities, the information contained herein, perhaps best aligns with Sustainable and Engaging Government, specifically objective 4.1: High Quality, Efficient and Coordinate Core Services, which promote an organizational culture that values continuous improvement, collaboration, and innovation.

Other Pertinent Reports

PAC-C 1-2020 – Proposed Procurement Work Plan 2020-2021 (September 14, 2020)

PAC-C 1-2021 - Procurement Work Plan Update 2020-2021 (March 8, 2021)

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Appendices

Confidential Appendix 1	A Matter of Advice that is Subject to Solicitor-Client Privilege – Recommendations for Reporting RFP Results
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