
Subject: Procurement By-Law Review and Proposed Amendments

Report to: Corporate Services Committee

Report date: January 9, 2019

Recommendations

1. That the By-law to define the procurement policies and procedures for The Regional Municipality of Niagara (By-law 02-2016) **BE AMENDED** as outlined in Report CSD 12-2019;
2. That staff **BE AUTHORIZED** to further amend By-law 02-2016 to amend Section 21 once Niagara Region completes its full transition to eBidding (electronic submissions);
3. That the necessary by-laws **BE PREPARED** and **PRESENTED** to Council for consideration;
4. That Report CSD 12-2019 **BE CIRCULATED** to local area municipalities and external procurement stakeholders for information.

Key Facts

- The purpose of this report is to seek Council approval to adopt the proposed By-law amendments that will become effective January 17, 2019.
- The Municipal Act provides that a municipality shall adopt and maintain a policy with respect to its procurement of goods and services.
- The current Procurement By-law was last approved on November 12, 2015 and requires updates to address the following;
 - As ratified by Council on March 22, 2018 the Niagara Region joined other local municipalities in using bids&tenders™ as the sole distribution tool for the Region's procurement documents
 - As ratified by Council on March 22, 2018 the Niagara Region has adopted the use of two Negotiated Request for Proposal (NRFP) Templates (Concurrent and Consecutive)
 - The Canadian Free Trade Agreement (CFTA) came into effect July 1, 2017
 - The Comprehensive Economic and Trade Agreement (CETA) came into effect September 21, 2017
 - Housekeeping amendments including changes required as a result of organizational restructuring and other policy updates.

Financial Considerations

While there would be no direct financial impact associated with the proposed amendments to the Procurement By-law, efficiencies in staff resourcing via procedural amendments to the tendering process would be realized, specifically as it relates to the next phase of implementation of electronic bidding (electronic submissions).

Analysis

As required by the Municipal Act, 2001, Part VI, Section 270(1) (3), a municipality shall adopt and maintain policies with respect to the following matters: its procurement of goods and services. Additionally, section 40 of the current procurement bylaw 02-2016 identifies that the Commissioner of Corporate Services / Treasurer has the autonomy to review the effectiveness of this By-law at least every five (5) years and report to Council as necessary.

The Procurement Advisory Committee's 2018 Work Plan is grounded in the guiding principles of sustainability by assessing strategies, resources and technology to facilitate innovation, continuous improvement which ensure process integrity and protect the interests of Niagara Region, the public and all stakeholders.

The advancement of two (2) Procurement Advisory Work Plan items, specifically Electronic Bidding and Negotiated RFP represent a significant achievement in the modernization roadmap for Niagara Region's procurement function. These proposed amendments will have a profound effect on how Niagara Region presents its opportunities for the acquisition of goods, services and construction to the market; the results of which will ensure our continued adherence to the principles of fair, open, transparent procurement practice and the achievement of value for money which will effectively contributes to our long-term financial sustainability.

Appendix 1 provides a high level summary of the proposed substantive amendments to the Procurement By-law including Electronic Bidding, Negotiated Request for Proposals, Trade Treaty Legislation and Housekeeping (not including minor changes required to reference other updated internal policies, changes to job titles arising from organizational restructuring e.g. from "Commissioner of Corporate Services" to Commissioner of Enterprise Resource Management Services"; and other grammatical/formatting updates).

Electronic Bidding

On March 22, 2018 Council ratified the March 7, 2018 Corporate Services Committee recommendations (CSC-C 10-2018) for Consideration from the Procurement Advisory Committee meeting held on February 23, 2018, specifically the following Council approved Procurement Work Plan 2017-2018 item:

- PAC-C 1-2018 which authorized staff to enter into an agreement, subject to the satisfaction of the Director of Legal and Court Services, with eSolutions Group to provide an electronic bidding (e-bidding) solution, as the sole distribution tool for the Region's procurement documents.

Since July 3, 2018 Procurement & Strategic Acquisitions have undertaken a phased approach to the implementation of eBidding, with the full migration to electronic submissions (Phase II) commencing with Council approval of this report. With regards to Section 21 (Formal Bid Process) of the Procurement By-law, Council is asked to approve the substance of this change (amendment of this section) and delegate the authority to staff to bring the required amending Bylaw without the need for a further staff report once staff complete the full transition eBidding (electronic submissions).

Negotiated Requests for Proposal

On March 22, 2018 Council ratified the March 7, 2018 Corporate Services Committee recommendations (CSC-C 10-2018) for Consideration from the Procurement Advisory Committee meeting held on February 23, 2018, specifically the following Council approved Procurement Work Plan 2017-2018 item:

- PAC-C 2-2018 which approved the adoption of two Negotiated Request for Proposal (NRFP) Templates (Concurrent and Consecutive); and directed staff to undertake the required Procurement By-Law changes to use NRFPs and to bring these recommendations along with any required policies associated with the use of NRFPs to a subsequent Committee for approval and until such time as this occurs, the use of NRFPs would be limited to procurements in which their use was specifically approved by Council.

With reference to the latter part of aforementioned recommendation whereby Staff would bring these recommendations along with any required policies associated with the use of NRFPs, Procurement will (in consultation with Client Department) assume the responsibility of making the determination as to whether the use of a negotiated RFP would be the most effective and conducive strategy to achieve a successful outcome and best value based on the nature of the project. As a result, Staff do not propose any policies regarding the use of NRFPs as being required at this time.

Trade Treaty Legislation

The purpose of the CFTA and CETA is to establish a transparent and efficient framework to ensure fair and open access to government procurement opportunities for all suppliers. These requirements are binding on municipalities, school boards, and publicly-funded academic, health, and social service entities. Key areas of compliance include procurement practices with respect to bid advertising, contract award information and vendor debriefing, establishing a formal bid dispute process, and collecting and reporting of procurements statistics.

The chart below outlines the dollar value thresholds where the Niagara Region's procurement processes must adhere to the conditions of these agreements.

Canadian Free Trade Agreement (CFTA)

In December 2014, federal, provincial and territorial governments began negotiations to strengthen and modernize the Agreement on Internal Trade (AIT). They were guided by direction from premiers and the federal government to secure an ambitious, balanced and equitable agreement that would level the playing field for trade and investment in Canada.

The new Canadian Free Trade Agreement (CFTA) resulted from these negotiations and entered into force on July 1st, 2017, now commits governments to a comprehensive set of rules that will help achieve a modern and competitive economic union for all Canadians. Through this legislation all governments have made precedent-setting commitments to promote open procurement practices which help create a level playing field for companies operating across Canada, and boost value-for-money in government purchasing. Canadian companies that operate across a number of sectors, such as construction firms, are now able to compete more readily for government contracts. Each government must ensure that it has an independent bid protest mechanism in place, allowing suppliers to challenge procurements they think have broken the agreement's rules.

Comprehensive Economic and Trade Agreement (CETA)

A free-trade agreement between Canada, the European Union and its member states. CETA has been provisionally applied, so the treaty has eliminated 98% of the tariffs between Canada and the European Union (EU).

The negotiations were concluded in August 2014. All 28 European Union member states approved the final text of CETA for signature. The Prime Minister of Canada executed the agreement on October 30, 2016 and the European Parliament approved the deal on February 15, 2017. The agreement is subject to ratification by the EU and national legislatures and can only enter into force if no adverse opinion is given by the European Court of Justice following a request for an opinion by Belgium. Until its formal entry into force, substantial parts are provisionally applied from September 21 2017.

With regards to both trade treaty legislative changes, Procurement have been reviewing our internal processes to ensure compliance with the new legislation, while in parallel working to update Procurement By-law to align with the new requirements. In order to ensure that Niagara Region procurement practices are compliant with all applicable Provincial and Federal legislation that came into effect in 2017, a review of the Niagara Region's Procurement By-law was required.

Thresholds:

CETA and CFTA thresholds are adjusted every two years, at the start of the year. The thresholds identified below, in effect through December 31, 2019 will be revised on January 1, 2020 at which time Procurement will be responsible for ensuring that any ensuing procurements are compliant with the current and revised values of CETA and CFTA.

JAN 1/18 – DEC 31/19	CFTA	CETA
GOODS AND SERVICES	\$101,100	\$365,700
CONSTRUCTION	\$252,700	\$9,100,000

Housekeeping

The proposed amendments to the By-law also incorporate general housekeeping changes including but not limited to amendments to position titles which reflect the organizational changes which have occurred since the Bylaw was last updated, general formatting, consistency in language, schedules to confirm matching to PeopleSoft setup and reference to the new P-Card Policy.

Alternatives Reviewed

While Corporate Services Committee could elect to defer the proposed amendments to the By-law. Staff are not recommending this as with the exception of housekeeping items, the trade treaty related changes are legislated and the amendments related to eBidding/Negotiated RFP were previously approved via the noted reports to Council.

Relationship to Council Strategic Priorities

This report is being brought as it reflects the priority of Doing Business Differently. Additionally, Procurement and its related activities are critical in maintaining taxpayer affordability.

Other Pertinent Reports

PAC-C 2-2017 Updates Procurement Work Plan 2017-2018
PAC-C 3-2017 eProcurement Software Solutions (e-Bidding)
PAC-C 1-2018 Region Procurement e-Tendering and e-Bidding System
PAC-C 2-2018 Flexible Formats: Negotiated RFP Templates

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Appendices

Appendix 1

Summary of the proposed substantive amendments to the Procurement By-law related to Electronic Bidding, Negotiated Request for Proposals, Trade Treaty Legislation and Housekeeping.

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Section 1: Purposes, Goals and Objectives of this By-law

Change	Description	Comments
Replaced	Purchasing Management Association with Supply Chain Management Association	Housekeeping

Section 2: Definitions

Change	Description	Comments
Removed	Bid Approval Report	Housekeeping
Added	Bid Document Form	Housekeeping
Added	Bidding System	Electronic Bidding
Added	CETA and CFTA	Trade Treaty
Added	Language to Conflict of Interest / Policy Reference	Housekeeping
Added	Language to Department Commissioner	Housekeeping
Added	Negotiated Request for Proposal	Negotiated RFP
Removed	Substantive Objection	Trade Treaty
Added	Pre and Post Award Bid Dispute	Trade Treaty

Section 4: Responsibilities and Authorities

Change	Description	Comments
Added	Ensuring compliance with current and revised values of CETA and CFTA	Trade Treaty

Section 6: Trade Agreements

Change	Description	Comments
Added	Subject to the provisions of trade agreements including but not limited to CETA and CFTA	Trade Treaty

Section 7: Advertising

Change	Description	Comments
Added	Changes related to CETA, CFTA and Bidding System	Trade Treaty

Section 14: Request for Quotation

Change	Description	Comments
Added	Bid Document Form	Housekeeping
Clarified	Reporting of Bid Results	Trade Treaty

Section 15: Request for Tender

Change	Description	Comments
Added	Bid Document Form	Housekeeping
Clarified	Reporting of Bid Results (Section 23)	Trade Treaty
Added	Publish award notice using the Bidding System	Trade Treaty

Section 16: Request for Proposal

Change	Description	Comments
Added	Negotiated Request for Proposal to Section Header and reference in all requirements in this section	Negotiated RFP
Added	Bid Document Form	Housekeeping
Clarified	Reporting of Bid Results (Section 23)	Trade Treaty
Added	Publish award notice using the Bidding System	Trade Treaty

Section 18: Single Source Purchases

Change	Description	Comments
Removed	Referenced to a Sole Source is being recommended	Housekeeping
Clarified	Reporting of Bid Results (Section 23)	Trade Treaty
Added	Publish award notice using the Bidding System	Trade Treaty

Section 19: Negotiation

Change	Description	Comments
Clarified	Reporting of Bid Results (Section 23)	Trade Treaty

Section 20: Roster for Professional or Specialized Services

Change	Description	Comments
Added	Bid Document Form	Housekeeping
Added	Advertised in accordance with Section 7	Trade Treaty

Section 21: Formal Bid Process

Change	Description	Comments
Removed	Reference to the Regional Clerk receiving Bids as Procurement and Strategic Acquisitions receives all Bids with the exception of Informal Quotations	Housekeeping
Removed	Reference to Request for Pre-Qualification as only Informal Quotation will be not be received by Procurement and Strategic Acquisitions staff	Housekeeping

Section 23: Reporting Procedures

Change	Description	Comments
Rewritten	Section completely to include reporting at \$25,000 threshold for procurement processes referenced in sections (14, 15, 16 and 20) using the Bidding System.	Trade Treaty

Section 30: Dispute Resolution

Change	Description	Comments
Rewritten	Section completely to replace current Substantive Objection process with Pre and Post Award Bid Dispute process.	Trade Treaty

Section 31: Lobbying Restrictions

Change	Description	Comments
Removed	"Lobbying restrictions shall apply..."	Housekeeping

Section 33: Surplus Assets

Change	Description	Comments
Replaced	"Department" with "capital reserve" with regards to the account to be credited with the net proceeds from the disposal of surplus assets	Housekeeping

Schedule "B": Purchasing and Execution Authority

Change	Description	Comments
Replaced	"Director" with "Manager" in Request for Proposal Table under Purchasing Authority for the dollar value of > \$25,000 to \$100,000	Housekeeping