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**Subject:** Draft – Procurement By-law Amendments

**Report to:** Procurement Advisory Committee

**Report date:** Monday, June 21, 2021

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## **Recommendations**

1. That Report PAC-C 4-2021 **BE RECEIVED** for information.

## **Key Facts**

- The purpose of this report is to provide Procurement Advisory Committee (PAC) members with information on the proposed amendments to Procurement By-law 02-2016 as amended on February 28, 2019.
- The proposed amendments contained herein represent a continuation of the recommendations proposed by the externally engaged Procurement Law Office
- Based on the in process work completed to date, Procurement has instead completed a fulsome review of all proposed changes in lieu of interim amendments.
- The proposed changes are also provided for the purposes of soliciting feedback from the Procurement Advisory Committee which will inform the finalization of the By-law which will be reported at an upcoming Corporate Services Committee (August).

## **Financial Considerations**

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

## **Analysis**

The purpose of this report is to provide members of the Procurement Advisory Committee (PAC) with information on the proposed amendments to Procurement By-law 02-2016 as amended on February 28, 2019. The proposed changes are also provided for the purposes of soliciting feedback from the Procurement Advisory Committee which will inform the finalization of the By-law which will be reported at an upcoming Corporate Services Committee (August).

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 By-law 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.

In February 2019, the current By-law was approved which included amendments to adopt two Negotiated Request for Proposal Templates, ensure compliance with trade treaty legislation (CFTA and CETA) and address housekeeping changes including those required as a result of organizational restructuring and other policy updates.

In August 2019, Niagara Region engaged the Procurement Law Office (TPO), an external legal firm based in Toronto, to conduct a review of the current Procurement By-law to identify areas of potential improvement and provide recommendations for update.

In September 2019, the Procurement Law Office provided their deliverables for this assignment, which was subsequently reported at the November 18, 2019, PAC meeting (PAC-C 6-2019). At the March 8, 2021, Procurement Advisory Committee (PAC), two options were presented; interim amendments or maintain current workplan timeline of Q3-2021 and re-assess at this date approaches. Committee members were in support of staff proceeding with proposed interim revisions to the Procurement By-law. Procurement re-visited the proposed recommendations coupled with the in process work completed to date and has instead opted to complete a fulsome review of the By-law.

These proposed amendments represent a continuation of our effort to demonstrate how Procurement, as a strategic partner, continues to provide best practice in municipal procurement governance by promoting innovation and continuous improvement, ensuing process integrity all whilst protecting the interests of Niagara Region, the public and all stakeholders.

While the current version of the By-law sought to subtly amend the 2016 version, it is staff's intention that the current version of the By-law would be repealed and replaced by a new proposed By-law which duly considers these observations and recommendations, specifically that the By-law be simplified by:

- Reducing the procedural content and improving the readability by tightening up the defined terms and using more natural language;
- Streamlining the By-law's focus on more appropriate high-level governance matters, such as:
  - governing principles;
  - core roles and responsibilities of the Region's Council, officers and employees;
  - delegations of authority for procurement approvals and contracting activities;
  - management of procurement-related information and records; and
  - compliance and monitoring.
- Removing overly detailed and prescriptive wording with respect to the various formats that may be used to conduct a procurement process;
- Moving the procedural content from the By-law into a separate supporting procedural and protocol documents;
- Consideration of replacing the descriptive different types of procurement document "formats" (e.g. RFP, RFT, RFQ, etc.) with core "methods" like invitational or open competitions.
- Moving these descriptive procurement document formats to a procedural and protocol document, along with guidelines for selecting the appropriate format for a particular procurement and preparing the procurement document.
- Considering the use of core methods of procurement which are: low value purchases; ordering from an existing supply arrangement (e.g. qualified supplier roster, standing offer); invitational competition (inviting selected suppliers to submit bids; open competition (publicly posted solicitation); and non-competitive procurement (sole or single source contacting).
- Considering amendments to and the removal of some specific provisions and terminology that may be potentially problematic.

With regards to the protocols, the Procurement Office do not have a standard package for just protocols, just a combination of the Procurement Roadmap Policy and base protocols which typically costs \$22,000, but in this case, they have provided a quote for

a custom package of the 6 Protocols which Procurement will acquire: Debriefing, Procurement Protests, Supplier Performance Evaluation, Supplier Disqualification, Contract Management and Document Drafting for a discounted flat rate of \$12,500 (discount of \$2,500).

### **Alternatives Reviewed**

None, other than that identified herein, though the Committee can suggest amendments to the proposed changes.

### **Relationship to Council Strategic Priorities**

While Procurement & Strategic Acquisitions and its related activities align with many of Council's 2019-2022 Strategic Priorities, the Procurement Work Plan 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 1-2021 Procurement Work Plan Update 2020-2021 (March 8, 2021)

PAC-C 2-2020 - Procurement Advisory Committee Work Plan Update (Nov 16, 2020)

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

PAC-C 6-2019 - Procurement Work Plan Update 2019-2020 (Nov 18, 2019)

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## **Appendices**

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