

# Procurement By-law Proposed Amendments

Procurement Advisory Committee: June 21, 2021

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## **PROCUREMENT BY-LAW HIGH LEVEL OVERVIEW**

- 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;
- Moving the procedural content into a separate supporting procedures and protocols document;
- Replacing the descriptive different types of procurement document "formats" (e.g. RFP, RFT, RFQ, etc.) with core "methods" like invitational or open competitions.

**Section 1 – Purposes Goals and Objectives:** Extending authority to the CAO and to practice reciprocal non-discrimination and geographic neutrality

**Section 2 – Definitions:** Removed reference procedural content, revised definitions and added Best Value, Real Property, Standard and Non Standard Procurement

**Section 3 – Application :** does not apply to the acquisitions or disposal of real property and reference to procedures and protocols (which will be developed by Procurement)

**Section 4 – Responsibilities and Authorities:** Revised and/or expanded the roles identified in the By-law to include Department Commissioners, all Employees and Procurement & Strategic Acquisitions employees

## **Section 5 – Separation of Roles and Role of Council**

- Establish policy and approve expenditure via Budget Approval Process
- Staff authority to incur expenditure in accordance with approved budget
- Council may require Departments to obtain their approval; high value/significant risk, security concerns or community interest
- No Council involvement from initiation of process through to award

**Section 7 – Standard Procurement:** Existing Supply Agreement; Roster Competition; Low Value; Invitational or Open Competition

**Section 8 – Non Standard Procurement:** Process other than Standard, Non-Competitive process like single source, emergency. Sole Source will be continued to be merged with Single Source.

**Sections 10-16 Standard Procurement (RFPQ, EOI, Low Value, Informal RFQ, RFQ, RFT and RFP:** Removed procedural content; Procedures to be developed

**Sections 17 Emergency:** Was Special Circumstance – Procurement Office recommendation. Reported to the Director, Procurement & Strategic Acquisitions - Commissioner, Corporate Services review/approved funds.

**Section 18 – Single Source:** Revised/updated allowable exceptions, includes Sole Source and removed Roster as an exception

**Section 19 – Negotiation** (removed), TPO, not a method of procurement.

**Section 21 – Bidder Debrief:** Protocol to be developed

## **Section 24 – Council Approval (New Content)**

- Contract requiring approval from Ontario Municipal Board
- Exceeds Council approved budget
- Authority has not been expressly delegated to Staff
- Where By-law is being waived or award is not to either the lowest compliant or highest scoring compliant bid.
- Where there is an irregularity or unresolved challenge in connection with the procurement process and, in the opinion of the CAO, in consultation with the Director of Legal and Court Services, the award of the contract is likely to expose Niagara Region to legal, financial or reputational risk.
- Where necessary, the CAO is authorized to approve the contracts normally subject to Council approval, as set out in this section, during the time that regular Council meetings are suspended, provided that a report is submitted to Council, as soon as reasonably possible, setting out the details of any contract approved pursuant to this authority.

**Section 26 – Unsolicited Proposals (New):** Unsolicited proposals, offers for presentation of products/services must be submitted to the Director, Procurement. Form of the competitive bid process. Must comply with the provisions of this Procurement By-law. In the absence of a competitive process, a contract may only be awarded in respect of an unsolicited proposal if a Non-Standard Procurement is permitted in accordance with this By-law and all applicable procedures and protocols

**Section 27 – Bid Irregularities (Removed):** TPO – procedural content

**Section 29 – Now Contract Management and Supplier Performance:** Managed by Department, Procurement must be involved in the management of contract disputes. New Supplier Disqualification Protocol to be developed.

**Section 30 – Dispute Resolution is now Procurement Protests:** Procedural content removed. Suppliers are able to protest the outcome of a procurement process. Submitted in writing to the Director, Procurement & Strategic Acquisitions and will be responded to by Niagara Region in accordance with the Region's Procurement Protest Protocol (To be developed)

**Section 32 - Records Retention and Access to Information:** All procurement activities must be supported by appropriate documentation and all records relating to a procurement process (Contract Management Protocol to be developed)

**Section 33 – Surplus Assets:** Removed procedural content – Department report to Director, Procurement & Strategic Acquisitions, residual value and not sale to Council/Staff. Surplus Property Protocol will be developed



**Section 34 – Compliance:** Subdividing, splitting or otherwise structuring procurement requirements or contracts in order to reduce the procurement value or in any way circumvent the requirements or intent of this By-law is known as contract splitting and is **not permissible**

### **Section 35 – Environmentally Sound Acquisitions Green Procurement**

- All departments, in conjunction with the Procurement & Strategic Acquisitions, **are encouraged (must?)** to seek additional ways of achieving the goal of being environmentally safe and responsible by thorough review of each procurement process.
- To ensure that, wherever possible and economically feasible, the Region's solicitation document includes specifications that reflect environmentally friendly attributes of the goods and services.

## **Section 38 – Now Region's Conflict of Interest**

- No personal purchases
- No ability to bid on or personally obtain assets which they have declared surplus.
- No accepting directly or indirectly, from any person, company, firm or corporation to which any Purchase Order or Contract is, or might be awarded, any rebate, gift or money
- Must declare Conflicts of Interest to the Commissioner of Corporate Services/Treasurer - no involvement in a Bid Solicitation process where a real or perceived Conflict of Interest has been found or deemed to exist including but not limited to:
  - requesting the Deliverables, setting the parameters of the Purchase, evaluating Bids or recommending, deciding or making Awards;
  - direct contact with those making those Purchasing decisions, both in Procurement and Regional Department.

## **Section 39 – Supplier’s Conduct and Conflict of Interest (New)**

- Act with integrity and conduct business in an ethical manner
- NR Refuse to do business - engaged in illegal or unethical bidding practices; has an actual or potential conflict of interest; has an unfair advantage in the procurement process; or fails to adhere to ethical business practices
- Supplier must declare
- Illegal and unethical bidding practices means - bid-rigging, price-fixing, bribery or collusion etc.
- No offers of gifts or incentives to Region staff, members of Council
- No Lobbying members of Council or Regional Staff or engaging in any prohibited communications during a procurement process;
- No submitting inaccurate or misleading information in response to a procurement opportunity;

## **Schedule A – Consultation ongoing with Regional Departments**

**Completed:** May 27 2021: Presented By-law amendments to CLT. Proposed amendments shared with Finance, Legal and CLT

### **Next Steps : June 21, 2021: Present By-Law amendments to PAC**

- July 2021: Finalize Bylaw based on input from CLT/PAC
- August 2021: Draft By-law to Corporate Services(CSC)

**Protocols to be developed include:** Debriefing, Procurement Protests, Supplier Performance Evaluation, Supplier Disqualification, Contract Management and Document Drafting