
Subject: Special Procurement Rules for Public Works Single Source Exceeding \$100,000

Report to: Public Works Committee

Report date: Tuesday, August 10, 2021

Recommendations

1. That staff **BE DIRECTED** to discontinue the interim procurement approval procedures for Public Works Single Source purchases exceeding \$100,000 introduced July 30, 2020; and, to return to consistently applying the provisions of Niagara Region's Procurement By-law 02-2016 as amended February 28, 2019; and,
2. That staff **BE DIRECTED** to provide information reports to the Corporate Services Committee each quarter identifying all corporate non-competitive procurement activities that exceeded \$100,000 in the intervening period.

Key Facts

- Special procurement approval procedures for the Public Works Department were introduced July 30, 2020 as an interim control measure pending any applicable recommendations from the KPMG Audit of Non-competitive procurement and the investigation of Whistleblower Policy complaints. The final reports on these topics have been received by Regional Council and neither third-party report proposed special procurement procedures for Public Works.
- Procurement By-law 02-2016 contains criteria and approval procedures applicable to single source procurement activity by all Departments. Appendix 1 of this report (Schedule "B" of the By-law 02-2016) identifies the approval authorities required for any Single Source procurements meeting the appropriate criteria.
- As reported to the June 21, 2021 Procurement Advisory Committee in PAC-C 4-2021, staff are currently drafting revisions to By-law 02-2016 and will present a report to Corporate Services Committee in Q3/Q4 of 2021.

Financial Considerations

Single source procurement activities subject to the July 30, 2020 interim procedures have approved funding in place from either the Capital or Operating budgets in the respective divisions in Public Works.

Analysis

At the Special Council meeting on July 30, 2020, Regional Council instructed staff that, “If any single source [Public Works] procurement [over \$5000] is deemed essential there must be approval first received by the Public Works Committee.” On August 18, 2020, the CAO provided Confidential Memorandum CONF-C 6-2020 providing key information in response to the staff direction. At its meeting on September 17, 2020, Regional Council approved an increase in the limit from \$5000 to \$100,000.

This interim special procurement procedure was introduced as an interim control measure pending the results of the KPMG Audit of Non-Competitive Procurement and the completion of an investigation by Kroll LLP of Whistleblower Policy Complaints. At its meeting on December 7, 2020 Regional Council received reports AC-C 11-2020 and AC-C 15-2020 containing the final KPMG Audit of Non-Competitive Procurement Activity; and, at its meetings on January 21, 2021 and February 25, 2021 Regional Council received reports CL-C 4-2021, and CL-C 9-2021 concerning the Whistleblower Policy investigation. The reports by KPMG and Kroll did not propose any related changes to the Procurement By-law or identify a need for special measures to be applied to Public Works.

The intent of the Procurement By-law is to ensure the appropriate balance of effective approval control and efficient utilization of resources to ensure “best value for the Corporation”.

Quarterly reporting to the Corporate Services Committee of single source procurement awards exceeding \$100,000 will reduce delays in conducting the business of the organization while providing open transparent accounting of these activities.

Alternatives Reviewed

Alternatives reviewed:

- Retain the existing special procurement process applicable only to Public Works. This is not recommended due to the resources and process delay required to report monthly. In addition, it is inconsistent with the provisions of the Procurement By-law and the procedural rules applicable to all other Departments.
- Amend the Procurement By-law to adjust the Single Source Purchasing Authority to incorporate changes similar to the current special provisions. This is not recommended as it would further increase the resources required and extend the impact of process delay to other Departments.

Relationship to Council Strategic Priorities

This report aligns with Sustainable and Engaging Government, specifically objective 4.1: High Quality, Efficient and Coordinated Core Services.

Other Pertinent Reports

- AC-C 11-2020, December 7, 2020 Final Report on Non-Competitive Procurement Audit
- AC-C 15-2020, December 7, 2020 Supplemental Information Report to the KPMG Final Audit Report on Non-Competitive Procurement Audit (AC-C 11-2020)
- AC-C 1-2021, February 8, 2021 Further Analysis of KPMG Final Audit Report on Non-Competitive Procurement Audit
- Confidential CL-C 4-2021, January 21, 2021 A Matter concerning Personal Matters about identifiable individuals under s. 239(2) of the Municipal Act, 2001 - Update on Whistleblower Policy Complaints
- Confidential CL-C 9-2021, A Matter concerning Personal Matters about identifiable individuals under s. 239(2) of the Municipal Act, 2001 – Investigation of Whistleblowers' Complaints relating to the Water and Wastewater Division
- CONF-C 6-2020, July 30, 2020 Closed Session - Update from Special Council Meeting
- PW 42-2020, September 8, 2020 Approval of Various Single Source Public Works New Purchase Orders and Purchase Order Change Request

- PW 45-2020, October 13, 2020 Approval of Public Works Single Source Purchase Requests Over \$100,000
- PW 47-2020, November 10, 2020 Approval of Public Works Single Source Purchase Requests Over \$100,000
- PW 3-2021, January 12, 2021 Approval of Public Works Single Source Purchase Requests Over \$100,000
- PW 7-2021, February 16, 2021 Approval of Public Works Single Source Purchase Requests Over \$100,000
- PW 13-2021, March 9, 2021 Approval of Public Works Single Source Purchase Requests Over \$100,000
- PW 17-2021, April 13, 2021 Approval of Public Works Single Source Purchase Requests Over \$100,000
- PW 25-2021, May 11, 2021 Approval of Public Works Single Source Purchase Requests Over \$100,000
- PW 27-2021, June 15, 2021 Approval of Public Works Single Source Purchase Requests Over \$100,000
- PW 41-2021, July 13, 2021 Approval of Public Works Single Source Purchase Requests Over \$100,000

Prepared and Recommended by:

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This report was prepared in consultation with Bart Menage, Director Procurement and Strategic Acquisitions and reviewed by Todd Harrison, Treasurer/Commissioner of Corporate Services

Appendices

Appendix 1 Schedule "B" Procurement By-Law The Regional Municipality of Niagara Purchasing and Execution Authority