

Subject: Procurement By-law Review and Proposed Amendments

Report to: Committee of the Whole

Report date: Thursday, February 6, 2025

Recommendations

1. That Report CSD 5-2025 **BE RECEIVED** for information.

Key Facts

- To ensure the Procurement By-law remains effective, responsive, and aligned with industry standards, staff undertook a comprehensive review of the existing procurement policy.
- An external firm, The Procurement Office (TPO), led by Paul Emanuelli, a recognized expert in Canadian public procurement law, was engaged to conduct the initial review of our current procurement by-law and they were consulted to consider whether the recommendations contained herein were compliant with legislative requirements, such as the trade treaty.
- The review process was informed by expert review of the procurement landscape at the Region in comparison to industry standards and best practices, as well as a thorough jurisdictional scan.
- A number of substantive changes are proposed in order to make the process for the acquisition of goods and services more responsive to business needs and better aligned to Council's strategic priorities.
- Subject to Council direction as part of the Committee of the Whole presentation, staff will finalize the draft by-law and will report back to seek Council approval early in Q2.

Financial Considerations

This report does not have an immediate direct financial impact; however, the Procurement By-law plays a critical role in ensuring efficient, transparent, and competitive procurement processes. Over time, this leads to long-term cost savings, reduced risks, and improved financial management.

Procurement By-law Review – Purpose and Approach

Section 270(1) of the Municipal Act (Ontario) requires that all municipalities adopt and maintain a policy with respect its procurement of goods and services. The Region's current Procurement By-law was last updated in 2019 and, in accordance with its terms, is to be reviewed for effectiveness at least every 5 years. To ensure the Procurement By-law remains effective, responsive, and aligned with industry standards, Niagara Region undertook a comprehensive review of the existing procurement policy. The review was guided by expert consultation and a thorough evaluation of emerging trends, best practices, and municipal comparators. The review sought to align the By-law with industry standards, focusing on openness, fairness, and transparency at every stage of the process.

Niagara Region engaged The Procurement Office (TPO), led by Paul Emanuelli, a recognized expert in Canadian public procurement law, to assist in the initial review of the by-law. Subsequent processes included in-depth consultations with municipal counterparts, a jurisdictional scan of comparable municipalities, and an evaluation of best practices.

An internal working group comprised of senior management from across the organization was established to ensure that any proposed changes would reflect operational needs, mitigate business risks and maximize efficiencies to support successful implementation.

The insights gathered from this review culminated in a series of recommendations aimed at modernizing the Procurement By-law to make service delivery more efficient and effective.

Niagara Region's Procurement Landscape

Procurement plays an important role as an integral partner in the daily operations of Niagara Region, the NRPS and the NTC. Procurement provides professional services, strategic planning, a client based focused approach to customer service which is value add.

Procurement is responsible for the management of all formal procurement processes to support operational needs; ensuring compliance with trade agreements; the Municipal Act and Procurement By-law. These currently include all formal quotations between \$25,000 and \$100,000, any Request for Tenders more than \$100,000 and any Request

for Proposals in excess of \$10,000. Supplier Administration and Purchasing Card Administration are also supported by Procurement.

Appendix 1 provides historical comparators including number of published projects, awarded value and average number of projects per FTE. In 2023, there were 211 published projects with a total award value of \$219 million or an average of 28 projects per FTE. In 2024, there were 234 projects but as 46 of those projects are currently in award stage the total award value of those projects cannot be reported until those agreements are executed.

Review Process

Significant outreach was conducted to engage municipal counterparts and gather insights on industry standards and emerging trends. As part of this, a comprehensive jurisdictional scan was performed, comparing procurement practices among upper and lower-tier municipalities across Ontario. This scan offered valuable insights into how other municipalities are adapting to changing regulations, market conditions, and operational needs.

In addition to the jurisdictional scan, the review process included internal consultations and was informed by expert review of the procurement landscape at the Region in comparison to industry standards and best practices. The Niagara Region working group was engaged throughout the process to ensure that the proposed amendments addressed service delivery needs, mitigated business risks, maximized efficiency and effectiveness, and TPO was then consulted to consider whether the recommendations complied with applicable legislative requirements, such as trade treaties.

Key Findings

A key goal of the review exercise was to assess whether the Region's current procurement practices could be more responsive to business needs and better aligned to Council's strategic priorities, while still preserving the overarching principles of competition, best value, fairness, objectivity, accountability and transparency. With this objective in mind, the following observations emerged from the review process:

1. The Region's purchasing value thresholds have not been updated since 2006;
2. There is an opportunity to better leverage and align procurement methodologies to trade agreements;
3. The Region would benefit from a more robust and standardized approach to vendor performance management;

4. The Procurement By-law contains both policy and procedural content and could be structured in a way that better aligns with the corporate policy framework;
5. Best practices in accountability controls suggest an opportunity to better separate political from administrative functions;
6. The current approval framework should be re-aligned to promote operational efficiency and to better reflect the current corporate structure (e.g., Associate Director and Deputy CAO do not currently appear as approval authorities); and
7. The By-law could better support the Region's commitment to social procurement and community benefits.

These observations, in turn, became the areas of focus for modernization. By leveraging the inter-jurisdictional benchmarking work and the recommendations of TPO staff are proposing a number of substantive changes to the current By-law, together with several housekeeping items.

Proposed Changes and Next Steps

A summary of the proposed substantive changes relative to the current By-law can be found in Appendix 2. Each substantive change is further discussed below and effectively balances controls to manage risks while enabling faster and more effective service delivery.

A. By-law Structure

Currently, the Procurement By-law includes both policy and procedural content. This proposed change would see procedural content being moved into a new suite of comprehensive procedural documents. This proposed change flows from a recommended best practice to separate policy from procedure and is in alignment with the Region's corporate policy framework. York Region underwent a similar exercise with their By-law in 2020 when it moved content that was procedural in nature to a series of administrative protocols which work to support but do not form part of their procurement bylaw. Delegation to the CAO for approval of procedural content will allow for the more efficient and agile updating of procedural elements from time to time. While the Procurement and Strategic Acquisitions Division has developed a number of resources (process/guidance) documents over the years, this structural change allocates clear responsibility for the development and approval of procedural content and codifies this content as integral to the operationalization of the By-law. The procedural documents will help ensure a standardized (and consistent) approach to things like, supplier performance evaluation, bidder debriefings, procurement planning, supplier suspension, etc.

B. Improving Vendor Performance Management

Vendor management is an area where there is opportunity for improvement by creating better alignment/standardization across the organization. By introducing more robust procedures to manage vendor performance the organization will create clear expectations of the vendor community and will enable better tracking of vendor performance over time (with more transparent and defensible consequences for poor vendor performance). These documents reflect a formalization of many of the more informal approaches/strategies currently in use and is responsive to the program opportunities identified by KPMG in its 'Vendor Performance Management Final Advisory Internal Audit Report' presented to Audit Committee on December 9, 2024. Collectively, these documents, set a standard expectation for supplier conduct; standardize the approach to performance monitoring/evaluation and suspension; and provide role clarity and expectations of staff regarding contract management.

C. Re-Aligning Values for Procurement Methods

Low Value Threshold. The Region has not updated its purchasing thresholds since 2006. Over the course of the last 19 years the relative value/utility of a 'low value' acquisition threshold of less than \$10k has largely been eroded. Moving from a \$10k to a \$25k threshold is consistent with a number of other municipalities who have recently increased their low value threshold to \$25k, including, Mississauga, Waterloo and York. Notably, the City of Toronto has a low value threshold of \$50k. While departments are only required to obtain one quote in the case of low value procurements, where practical, departments are encouraged to obtain multiple quotes to ensure they are obtaining best value. Quotes may be obtained through advertisements or supplier catalogues or by contacting the potential supplier(s) by telephone or email. If a department anticipates making multiple low-value procurements of the same deliverables and the total value of those purchases may exceed the applicable low-value procurement threshold, the department must contact Procurement Services to discuss the possibility of setting up a standing offer or qualified supplier roster.

Informal Quotes. A second proposed change seeks to expand the informal quote range to \$100k. The informal quote process is completed at the department level and not through procurement services. This is a simpler and more efficient process than the formal quote process (which is completed by a procurement agent). By increasing the informal quotation band, it decentralizes a number of low risks, low value procurements allowing the Procurement and Strategic Acquisitions Division to focus their efforts on larger and more complicated Bid Solicitations. Training materials are available to departments to assist with conducting informal quotes and the Procurement and

Strategic Acquisitions Division is always available to answer questions and assist, as necessary. Operationally, this change will mean that individual departments can more quickly obtain quotes for low dollar value works that are well below trade treaty open competition thresholds. Over the last three years, the number of quotes that would have been subject to the informal quote process would have ranged from 55 to 64. A number of other municipalities follow a similar decentralized approach for lower value procurements (i.e., those below trade treaty open procurement thresholds) as shown, below:

Mississauga	York Region	Halton	Durham
\$25k-100k	\$25k-100k	\$15k-100k	\$10k-100k

Formal Quotes. Owing to the change to the Informal Quote methodology, above, the Region’s Formal Quote procurement methodology would now be conducted for the procurement of goods and services between \$100k and the Open Competition Threshold (a concept tied to the Canadian Free Trade Agreement (CFTA) and is currently set at \$133,800 for goods and services and \$334,400 for construction and is adjusted ‘up’ every 2 years). Open Competitions (e.g., tenders/RFPs) will be required for bid solicitations above the Open Competition Threshold set by the CFTA. These changes align the Region's requirement for open competition with its trade treaty obligations.

D. Approval Authorities

General Realignment. A key theme that emerged from the working group was that approval authorities were, in some cases, sitting too high in the organization and that they should be re-aligned to better reflect an approval process closer to the project. Additionally, the associate director and the Deputy CAO roles are not currently contemplated in the Bylaw. By introducing these roles as purchasing and document execution authorities there is, generally, a downward shift in approval authority. This change will allow for more timely and effective approvals at value appropriate levels (by staff closer to the work), while still ensuring appropriate safeguards for larger value acquisitions.

Council Approval for Competitive Awards. Best practices in municipal procurement include the clear separation of political and administrative functions in relation to the municipality’s procurement operations. In accordance with best practices, elected

officials should not be involved in the award of contracts in a competitive procurement process. Subject to accountability controls (e.g., the contract value is within budget and the process was conducted in accordance with governing rules), the authority to award the contract to the top-ranked proponent should be delegated to staff and neither Council nor any committee of Council should be involved in the award process. This ensures that the integrity of the bidding process is maintained and avoids potential risk exposure. From an operational perspective, the current need to go to Council before a contract is awarded is also inefficient. From the time a bid solicitation closes to the time it is approved at Council can take as much as two months.

This approach is consistent with a number of other municipalities, including York Region, Durham Region, Peel Region, Halton Region, Hamilton and Toronto who all provide delegated authority to senior staff to authorize and execute all contracts (i.e., there is no report to Council post-bid seeking approval to award). Recognizing the importance of keeping Council informed, the current requirement for Council approval will be replaced with a regular reporting requirement for all competitive contract awards in excess of \$5 million dollars. Importantly, this change would just apply to competitive procurement awards. Staff would still be required to seek Council approval for single source awards above \$1 million dollars.

E. Contract Amendments and Extensions

Approval authority for contract amendments and/or extensions is not expressly addressed in the current iteration of the Procurement By-law. Accordingly, in all cases, the extension to, or addition of, any work to a contract over and above what was initially awarded is processed in accordance with the single source approval authorities in Schedule "B" with any increase to a contract value above \$ 1 million requiring Council approval. Operationally, this proves cumbersome (and not practical) in situations where for example,

- (i) It would be costly to demobilize a construction site or stop work on a project in order to prepare a report and wait for it to go through the committee cycle for approval; and
- (ii) The additional work is such that it is a natural extension of, or necessary to complete, the initial scope owing to an circumstances that were unforeseen at the time of initial award (e.g., the need for additional bore holes; an unknown site condition, like contaminated soil, presents itself; the need to extend the term of a consultancy contract owing to construction delays, etc.).

In order to address this, a number of municipalities, including York Region, Peel Region, Halton Region, and, most recently the City of Orillia in 2022, have introduced specific language in their procurement bylaws providing for delegated authority to staff to approve contract amendments/extensions.

The single source approval authorities that are currently in Schedule “B” of the By-law were developed for the scenario of a non-competitive process to acquire goods and/or services from a specific supplier even though there may be more than one supplier capable of providing that good or service. Owing to a different risk profile, these approval authorities do not map well onto the above-referenced contract amendment or extension scenarios where it is not practical (or in some cases even feasible) to award the additional work to a different supplier.

The two primary risk elements when adding new value/scope to a contract are: (i) the increase(s) in contract value relative to the initial contract award value; and (ii) the increase(s) in value relative to the Open Procurement Threshold. Staff propose the introduction of the approval authority regime in the tables below to address these risk elements by tying approval authority to the level of relative risk. That is, as the value of the contract amendment relative to the original value of the contract increases and where the value of the increase exceeds the Open Competition Threshold so too does the approval authority. The introduction of this stand-alone contract amendment regime adds clarity and better supports operational reality by more appropriately attaching approval authority to risk level in contract amendment situations (as opposed to the single source approval authority table which is more appropriately designed to address an initial direct award).

Table of Authority if the Total Cumulative Value of the Increase is Less than 20% of the Original Procurement Value

Total Cumulative Increase	Authority
< Open Competition Threshold	Department Manager
> Open Competition Threshold	Associate Director (or Director where there is no AD)

Table of Authority if the Total Cumulative Value of the Increase is Equal to or Greater than 20% of the Original Procurement Value

Total Cumulative Increase	Authority
< Open Competition Threshold	Director
> Open Competition Threshold	Commissioner

There are a number of additional safeguards attached to the delegated authority being proposed above:

- (i) It is only applicable to competitively awarded contracts (e.g., it is not available in cases where the initial contract was a single source);
- (ii) It cannot be used in cases where the proposed additional scope is not a natural extension of (or logically flows from or is necessary to complete) the initial contract scope of work (e.g., it cannot be used to surreptitiously circumvent the need for a competitive process or appropriate single source approvals where there is no nexus between the proposed additional scope and original contract scope);
- (iii) The cumulative value of all amendment(s) is within the approved budget envelope); and
- (iv) There is a rolled-up reporting requirement to Council in the event that the total cumulative value of all contract amendments exceed \$1 million dollars.

F. Schedule “A” Exemptions

In order to avoid confusion and provide for clear delegation of authority to execute certain agreements, additions are being made to Schedule “A” for things like Indigenous engagement activities and instances where the Region is acting as service manager in accordance with a legislative mandate. These activities should properly be exempt from procurement by-law methodologies and by adding these items to Schedule “A” staff are able to follow the approval authorities for document execution set out in Schedule “B”.

G. Social Procurement

Staff propose to introduce a new section supporting social and community benefits in procurements. Subject to complying with applicable trade agreements, where practical, procurements are to consider the requirements of this section. It is anticipated that a procedural document will be established to provide guidelines and parameters

pertaining to social procurement and community benefits once a Council approved policy position is adopted.

Housekeeping Items

In addition to the substantive amendments being proposed, a number of other housekeeping items are also being made, including:

1. The integration of the Niagara Transit Commission (NTC) flowing from By-law 2022-38 which requires that NTC comply with the Region's Procurement By-law;
2. The expansion of the use of rostering methodology
3. A modernization of the co-operative purchasing language which would see the By-law continue to support co-operative purchasing opportunities with local municipalities and other public agencies.
4. The establishment of a procurement review committee consisting of the director of procurement and strategic acquisitions together with two or more persons designated by the Corporate Leadership Team who are responsible for making determinations under the Procurement Protest Procedure, the Supplier Suspension Procedure and any other matters referred to it by the Director of Procurement and Strategic Acquisitions.
5. Refreshing some of the naming conventions (e.g. changing "single source" to "direct award").

Relationship to Council Strategic Priorities

This report reflects the importance of Procurement and how its related activities are critical in maintaining taxpayer affordability. Effective Region, Objective 1.1 Implement continuous improvement and modernized processes to ensure value-for-money in regional services and programs.

Other Pertinent Reports

[PAC-C 6-2019](https://pub-niagararegion.escribemeetings.com/Meeting.aspx?Id=c58101e4-a3e8-4feb-a16b-83b04b165b37&Agenda=Agenda&lang=English) - Nov 18, 2019 Procurement Work Plan Update 19/20
(<https://pub-niagararegion.escribemeetings.com/Meeting.aspx?Id=c58101e4-a3e8-4feb-a16b-83b04b165b37&Agenda=Agenda&lang=English>)

[CSD 12-2019](https://pub-niagararegion.escribemeetings.com/Meeting.aspx?Id=f437d899-38ba-4d24-b975-080215968efa&Agenda=Merged&lang=English) - January 9, 2019 Procurement By-Law Review and Proposed Amendments
(<https://pub-niagararegion.escribemeetings.com/Meeting.aspx?Id=f437d899-38ba-4d24-b975-080215968efa&Agenda=Merged&lang=English>)

PAC-C 3-2015 - Sept 14, 2015 By-Law Review and Recommended Changes
(Should you require a copy of this report, kindly contact the Regional Clerks Office)

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Appendices

Appendix 1 Internal Performance Measures

Appendix 2 Procurement Review Recommendations