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## **MEMORANDUM**

**PAC-C 4-2019**

**Subject:** Response to Councillor Information Requests (PAC)

**Date:** November 18, 2019

**To:** Procurement Advisory Committee

**From:** Bart Menage, Director, Procurement & Strategic Acquisitions

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This memo provides responses to Councillor Information Requests communicated at the March 11, 2019 Procurement Advisory Committee Open Session, specifically the following PAC 1-2019 minute items:

### **Minute Item 4.1: Presentation - Procurement Modernization**

- a) Provide information respecting the policy and/or procedure regarding when a fairness advisor is to be engaged. Councillor Gale.**

#### **By-law and Past Practice**

Procurement By-law 02-2016 as amended on February 28, 2019 defines a “Fairness Monitor” as an independent third party to observe all or part of a Bid Solicitation process and provide related feedback on fairness issues. Within the overarching objectives of the By-law, specifically item 1(b), it states that the Region ensure that the objectivity and integrity in the procurement process are maintained.

While this is effectively achieved via Procurement’s diligent oversight and guidance throughout the procurement process, the By-law also delegates autonomy to Procurement to engage in the services of Fairness Monitoring Services (Section 4 (b) (x) as and when required.

In recent history, Niagara Region has only engaged Fairness Advisory Services on two occasions; the 2017 Insurance and Risk Management RFP and the 2018 Potential Divestiture of the Municipal Recycling Facility. In both instances, Council was advised of staff’s intention to engage a Fairness Advisor and approval was sought and received in advance of that competitive process.

#### **Process to Engage Fairness Advisory services**

In a November 30, 2016 Report (CSD 73-2016), then Acting Commissioner of Corporate Services in consultation with Procurement proposed that where Fairness Monitoring was deemed a requirement, the following procurement selection process would be employed.

- i. Upon identification of the need for Fairness Monitor services by either staff or where directed by Council, Procurement would undertake a Request for Proposal process which leveraged the Provincial Vendor of Record (VOR) program for Management Consulting Services (OPS and Non-OPS) which was in effect through December 31, 2017.
- ii. A minimum of five (5) firms from the Provincial VOR for Fairness Commissioner Services would be invited to respond and all submissions received would be evaluated in accordance with the weighted matrix which was appended to that 2016 Council report. Pursuant to that evaluation process, Staff would present a recommendation to award to the highest scoring proponent.

While the aforementioned process was employed for the Insurance & Risk Management project, the VOR had expired when the Region undertook the 2018 Municipal Recycling Facility project. Given the very specific and specialized requirements, the Region elected to instead undertake its own open and competitive process. While the decision to engage in these services remains at the discretion of Staff and Council and within the delegated authority of Procurement & Strategic Acquisitions, there are general scenarios where employing a Fairness Advisory Services would be a prudent undertaking. These would include:

- Complex and/or high profile and/or high value projects;
- New/innovative procurement processes like the Negotiated RFP where due diligence is critically important;
- When public interest demands a higher than normal level of objective scrutiny;
- When the anticipated goods or services being acquired or the process itself could be viewed as contentious or the results potentially subject to challenge by the Bidding community;
- When there may be a perceived conflict of interest or unfair advantage for a vendor (i.e. likelihood of an incumbent vendor bidding);
- Where sensitive information is involved in the procurement; and
- When this latest process has evolved from a previously unsuccessful procurement process; or
- any significant outsourcing effort where former staff could be representing potential bidders

Of note, in the time since, the Provincial VOR has been re-established with an initial four year term through June 15, 2022 and a one year extension option. If Fairness Advisory services were deemed necessary for future projects meeting the criteria above, then Procurement could (based on the aforementioned) elect to either facilitate our own process or leverage this new Vendor of Record.

**Provide information respecting the purchasing and execution authority limits of staff. Councillor Gale**

In a March 16, 2019 communication to all Councillors on the Procurement Advisory Committee, the latest Council approved amendments to the Procurement By-law 02-2016 (as amended on February 28, 2019) were provided including the information respecting the purchasing and execution authority limits of staff. (Schedule B, pages 37 through 40 of the PDF By-law).

**Minute Item 6.2: PAC-C 2-2019 – Proposed Procurement Work Plan**

**b) Request feedback from across the corporation on potential improvements to the procurement scorecard. Councillor Zalepa.**

Pursuant to further correspondence with Councillor Zalepa which affirmed that the request specifically related to better understanding how the Region can improve their ability to acquire high quality service or products. Quoting from and with reference to an NIGP: The Institute for Public Procurement position paper on the concepts and practices to obtain Best Value in Government Procurement

*“Best Value Procurement (BVP) is both a concept and a set of recommended practices. Procurement professionals must be aware of BVP concepts, have a thorough understanding of the recommended methods and practices for achieving best value, and have the ability to effectively evaluate and apply the most appropriate approach to each procurement.”<sup>1</sup>*

There is no “one size fits all approach” because best value has many differing attributes, each specific to the nature of that which is being acquired. Applying an approach which relies solely on low bid or one singular contracting method for all acquisitions effectively results in less than ideal outcomes in terms of value. Value is achieved by continually applying the principles of Best Value Procurement (BVP) concepts to all Procurements from larger, more complex projects to those where minimum standards are clearly achievable and enforceable (award to the lowest bidder). In doing so, we effectively maximize the value added to the procurement process, the resulting outcomes, thereby increasing the likelihood of achieving desirable results.

At Niagara Region, this starts with the continued practice of Staff assessing all projects through the lens of best value and properly analyzing the attributes and outcomes which provide the greatest overall benefit. Then, Procurement in consultation with Staff can

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<sup>1</sup> NIGP: The Institute for Public Procurement, 2013 Position Paper on Best Value in Government Procurement, concepts and practices.

ensure that the measure by which a procurement strategy is determined for these projects not only aligns with its complexity but also that the evaluation process (scorecard) employed is purposely structured to focus on the key attributes which achieve best value outcomes.

For staff, the stages which guide their projects toward best value include

- i. Identify the possibilities: list all possible solutions, pros and cons of each, research the market, consult with colleagues and collaborate with stakeholders;
- ii. Identify relevant factors specific to the acquisition; and
- iii. Assign values or “weights” to the chosen factors and create selection criteria.

While value can be simply described as a comparison of costs and benefits, Niagara Region must continue to compare and weigh all potential benefits derived from the attainment of a projects deliverables against the costs to do so (acquisition, operation and ultimately disposal). Current practice is that during this assessment, consideration is also given to identifying and considering the status quo in addition to the comparative costs of differing alternatives which equally address needs, function and purpose.

“Value could be defined as a combination of “what” is important and “how much” it is important. As for the “what,” typical procurement considerations affecting value could include:

- Consistency, reliability, and responsiveness from the market;
- Costs identified through a life-cycle cost analysis;
- Reduction of risks such as schedule delays; costs added through change orders; degradation of performance or service from an outsourced provider; potential legal or financial risks; the need for Niagara Regional oversight of program delivery; the amount of needed contract administration effort; or the likelihood of successful/unsuccessful contract performance; and
- Environmentally preferable aspects (more efficient scheduling leading to less shipping impact, lower toxic materials content, less environmentally harmful manufacturing, less harmful end of life disposal, etc.).”<sup>2</sup>

Aside for the typical considerations which characterize best value like comparisons between strengths and weaknesses, pros and cons and risks and rewards, others include costs related to resourcing, acquisition, transition, operational, training and disposal. Other best value concepts could include: Performance-Based Contracting; Total Cost of Ownership (TCO); Design-Build; Construction Manager at Risk; Public-Private Partnerships; Industry Standards; the Procurement Process Map; recognizing value of each procurement phase and ongoing dialogue for continuous improvement.

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<sup>2</sup> NIGP: The Institute for Public Procurement, 2013 Position Paper on Best Value in Government Procurement, concepts and practices.

Staff and Procurement staff specifically will continue to grow and develop in their understanding of these the practices and methodologies and remain committed to the continued adherence to a focus on the key principles which drive best value through all procurement process. Best value remains the target, always.

Respectfully submitted and signed by

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Bart Menage, CSCMP, CRM  
Director, Procurement & Strategic Acquisitions