



**City of Hamilton
PROCUREMENT
SUB-COMMITTEE
AGENDA**

Meeting #: 22-001
Date: September 12, 2022
Time: 2:00 p.m.
Location: Council Chambers
Hamilton City Hall
71 Main Street West

Angela McRae, Legislative Coordinator (905) 546-2424 ext. 5987

Pages

1. CEREMONIAL ACTIVITIES
2. APPROVAL OF AGENDA
(Added Items, if applicable, will be noted with *)
3. DECLARATIONS OF INTEREST
4. APPROVAL OF MINUTES OF PREVIOUS MEETING
 - 4.1. October 29, 2021
5. COMMUNICATIONS
6. DELEGATION REQUESTS
7. CONSENT ITEMS
8. STAFF PRESENTATIONS
9. PUBLIC HEARINGS / DELEGATIONS
10. DISCUSSION ITEMS

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- 10.1. Amendments to the Procurement Policy and the Capital Pre-Approval Policy (FCS21103(a) / PW22081) (City Wide)

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11. MOTIONS

12. NOTICES OF MOTION

13. GENERAL INFORMATION / OTHER BUSINESS

14. PRIVATE AND CONFIDENTIAL

- 14.1. Closed Minutes - October 29, 2021

Pursuant to Section 9.1, Sub-sections (f), (i) and (k) of the City's Procedural By-law 21-021, as amended, and Section 239(2), Sub-sections (f), (i) and (k) of the *Ontario Municipal Act, 2001*, as amended, as the subject matter pertains to advice that is subject to solicitor-client privilege, including communications necessary for that purpose; a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization; and a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

15. ADJOURNMENT



Hamilton

Procurement Sub-Committee

MINUTES 21-001

9:30 am

Friday, October 29th, 2021

Council Chambers

Hamilton City Hall

71 Main Street West

Present: Councillors L. Ferguson (Chair), J.P. Danko (Vice-Chair), and N. Nann

Absent: Councillor T. Whitehead - Personal

THE FOLLOWING ITEMS WERE REFERRED TO THE AUDIT, FINANCE & ADMINISTRATION COMMITTEE FOR CONSIDERATION:

1. Commercial Relationship Between the City of Hamilton and Associated Paving & Materials Ltd. (FCS21102 / LS21044 / PW21064) (City Wide) (Item 14.2)

(Nann/Danko)

- (a) That the directions provided to staff in Closed Session, be approved;
- (b) That Closed Session recommendations be released publicly following approval by Council; and,
- (c) That the contents of Report FCS21102 / LS21044 / PW21064, Commercial Relationship Between the City of Hamilton and Associated Paving & Materials Ltd. and the attached Appendix remain confidential.

Result: Motion CARRIED by a vote of 2 to 1, as follows:

NO - Chair - Ward 12 Councillor Lloyd Ferguson
 NOT PRESENT - Ward 14 Councillor Terry Whitehead
 YES - Ward 8 Councillor John-Paul Danko
 YES - Ward 3 Councillor Nrinder Nann

2. Amendment to Procurement Policy to Allow for Negotiation of Contracts in Extenuating Circumstances (FCS21103 / LS21045) (City Wide) (Item 14.3)

(Danko/Nann)

- (a) That the directions provided to staff in Closed Session, be approved;

- (b) That Confidential Appendix A to Report FCS21103 / LS21045, Amendment to Procurement Policy to Allow for Negotiation of Contracts in Extenuating Circumstances, **as amended**, be released when the by-law is for consideration at Council; and,
- (c) That the contents of Report FCS21103 / LS21045, Amendment to Procurement Policy to Allow for Negotiation of Contracts in Extenuating Circumstances remain confidential.

Result: Motion CARRIED by a vote of 3 to 0, as follows:

YES - Chair - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 14 Councillor Terry Whitehead
YES - Ward 8 Councillor John-Paul Danko
YES - Ward 3 Councillor Nrinder Nann

FOR INFORMATION:

(a) CHANGES TO THE AGENDA (Item 2)

The Committee Clerk advised of the following changes to the agenda:

6. COMMUNICATIONS

- 5.1 Correspondence from Howard Krupat, DLA Piper (Canada) LLP, respecting Associated Paving and Materials Ltd.

Recommendation: Be received and referred to consideration of Item 6.1.

6. DELEGATION REQUESTS

- 6.1 Stan Capobianco, Marco Capobianco, Roger B. Campbell (Counsel), Howard D. Krupat (Counsel), Emma Cosgrave (Counsel), Associated Paving and Materials Ltd., respecting Item 14.2 (For today's meeting)

(Danko/Nann)

That the agenda for the October 29, 2021 Procurement Sub-Committee meeting be approved, as amended.

Result: Motion CARRIED by a vote of 3 to 0, as follows:

YES - Chair - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 14 Councillor Terry Whitehead
YES - Ward 8 Councillor John-Paul Danko
YES - Ward 3 Councillor Nrinder Nann

(b) DECLARATIONS OF INTEREST (Item 3)

There were no declarations of interest.

(c) MINUTES (Item 4)

(i) October 1, 2020

(Nann/Danko)

That the Procurement Sub-Committee Minutes of the October 1, 2020 Meeting be approved, as presented.

Result: Motion CARRIED by a vote of 3 to 0, as follows:

YES - Chair - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 14 Councillor Terry Whitehead
YES - Ward 8 Councillor John-Paul Danko
YES - Ward 3 Councillor Nrinder Nann

(d) COMMUNICATIONS (Item 5)

(i) Correspondence from Howard Krupat, DLA Piper (Canada) LLP, respecting Associated Paving and Materials Ltd. (Added Item 5.1)

(Danko/Nann)

That the Correspondence from Howard Krupat, DLA Piper (Canada) LLP, respecting Associated Paving and Materials Ltd. be received and referred to the consideration of Item 6.1.

Result: Motion CARRIED by a vote of 3 to 0, as follows:

YES - Chair - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 14 Councillor Terry Whitehead
YES - Ward 8 Councillor John-Paul Danko
YES - Ward 3 Councillor Nrinder Nann

(e) DELEGATION REQUESTS (Item 6)

(i) Stan Capobianco, Marco Capobianco, Roger B. Campbell (Counsel), Howard D. Krupat (Counsel), Emma Cosgrave (Counsel), Associated Paving and Materials Ltd., respecting Item 14.2 (For today's meeting) (Added Item 6.1)

(Nann/Danko)

That the delegation request from Stan Capobianco, Marco Capobianco, Roger B. Campbell (Counsel), Howard D. Krupat (Counsel), Emma Cosgrave (Counsel), Associated Paving and Materials Ltd., respecting Item 14.2, be approved for today's meeting.

Result: Motion CARRIED by a vote of 3 to 0, as follows:

YES - Chair - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 14 Councillor Terry Whitehead
YES - Ward 8 Councillor John-Paul Danko

YES - Ward 3 Councillor Nrinder Nann

(f) PUBLIC HEARINGS/DELEGATIONS (Item 9)

- (i) Stan Capobianco, Marco Capobianco, Roger B. Campbell (Counsel), Howard D. Krupat (Counsel), Emma Cosgrave (Counsel), Associated Paving and Materials Ltd., respecting Item 14.2 (Added Item 9.1)**

Stan Capobianco, Marco Capobianco, Roger B. Campbell (Counsel), Howard D. Krupat (Counsel), Emma Cosgrave (Counsel), Associated Paving and Materials Ltd., addressed the Committee respecting Item 14.2.

(Danko/Nann)

That the delegates be granted an additional five minutes for their delegation.

Result: Motion CARRIED by a vote of 3 to 0, as follows:

YES - Chair - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 14 Councillor Terry Whitehead
YES - Ward 8 Councillor John-Paul Danko
YES - Ward 3 Councillor Nrinder Nann

(Danko/Nann)

That the delegation from Stan Capobianco, Marco Capobianco, Roger B. Campbell (Counsel), Howard D. Krupat (Counsel), Emma Cosgrave (Counsel), Associated Paving and Materials Ltd., respecting Item 14.2, be received.

Result: Motion CARRIED by a vote of 3 to 0, as follows:

YES - Chair - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 14 Councillor Terry Whitehead
YES - Ward 8 Councillor John-Paul Danko
YES - Ward 3 Councillor Nrinder Nann

(g) PRIVATE AND CONFIDENTIAL (Item 14)

- (i) Closed Minutes – October 1, 2020 (Item 14.1)**

(Danko/Nann)

- (a) That the Closed Session Minutes of the October 1, 2020 Procurement Sub-Committee meeting, be approved as presented; and,
- (b) That the Closed Session Minutes of the October 1, 2020 Procurement Sub-Committee meeting, remain confidential.

Result: Motion CARRIED by a vote of 3 to 0, as follows:

YES - Chair - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 14 Councillor Terry Whitehead
YES - Ward 8 Councillor John-Paul Danko
YES - Ward 3 Councillor Nrinder Nann

(Nann/Danko)

That the Committee move into Closed Session, respecting Items 14.2 and 14.3 pursuant to Section 9.1, Sub-sections (f), (i) and (k) of the City's Procedural By-law 21-021, as amended, and Section 239(2), Sub-sections (f), (i) and (k) of the *Ontario Municipal Act, 2001*, as amended, as the subject matter pertains to advice that is subject to solicitor-client privilege, including communications necessary for that purpose; a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization; and a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

Result: Motion CARRIED by a vote of 3 to 0, as follows:

YES - Chair - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 14 Councillor Terry Whitehead
YES - Ward 8 Councillor John-Paul Danko
YES - Ward 3 Councillor Nrinder Nann

(ii) Commercial Relationship Between the City of Hamilton and Associated Paving & Materials Ltd. (FCS21102 / LS21044 / PW21064) (City Wide) (Item 14.2)

Staff was provided direction in Closed Session.

For disposition of this matter, refer to Item 1.

(iii) Amendment to Procurement Policy to Allow for Negotiation of Contracts in Extenuating Circumstances (FCS21103 / LS21045) (City Wide) (Item 14.3)

Staff was provided direction in Closed Session.

For disposition of this matter, refer to Item 2.

(h) ADJOURNMENT (Item 15)

(Danko/Nann)

That there being no further business the Procurement Sub-committee be adjourned at 10:58 a.m.

Result: Motion CARRIED by a vote of 3 to 0, as follows:

YES - Chair - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 14 Councillor Terry Whitehead
YES - Ward 8 Councillor John-Paul Danko
YES - Ward 3 Councillor Nrinder Nann



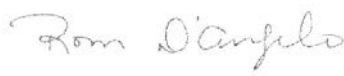
Respectfully submitted,

Lloyd Ferguson, Chair
Procurement Sub-Committee

Angela McRae
Legislative Coordinator
Office of the City Clerk



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Services and Taxation Division,
Financial Planning, Administration and Policy
and
PUBLIC WORKS DEPARTMENT
Energy, Fleet & Facilities Management Energy Division

TO:	Chair and Members Procurement Sub Committee
COMMITTEE DATE:	September 12, 2022
SUBJECT/REPORT NO:	Amendments to the Procurement Policy and the Capital Pre-Approval Policy (FCS21103(a) / PW22081) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Tina Iacoe (905) 546-2424 Ext. 2796 Duncan Robertson (905) 546-2424 Ext. 4744 Tom Kagianis (905) 546-2424 Ext. 5105
SUBMITTED BY:	Shelley Hesmer, Acting Director Financial Services and Taxation & Corporate Controller Corporate Services Department 
SUBMITTED BY:	Brian McMullen, Director Financial Planning, Administration and Policy Corporate Services Department 
SUBMITTED BY:	Rom D'Angelo, Director Energy, Fleet and Facilities Management Public Works Department
SIGNATURE:	

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**SUBJECT: Amendments to Procurement Policy and Capital Pre-Approval Policy
(FCS21103(a) / PW22081) (City Wide) – Page 2 of 13**

RECOMMENDATION(S)

- (a) That staff be directed to prepare a by-Law amending By-law No. 20-205, “A By-law to Adopt and Maintain A Procurement Policy for the City of Hamilton” with the amendments to the City of Hamilton’s (City) Procurement Policy as attached in Appendix “A” to Report FCS21103(a) / PW22081;
- (b) That Council approve the amendment to the City’s Capital Pre-Approval Policy, as attached in Appendix “B” to Report FCS21103(a) / PW22081;
- (c) That any financing required to fund deposits or prepayment requirements resulting from the amended City’s Capital Pre-Approval Policy (attached as Appendix “B” to Report FCS21103(a) / PW22081) be funded first from program reserve and second through an internal loan from the Unallocated Capital Reserve (#108020).

EXECUTIVE SUMMARY

The purpose of Report FCS21103(a) / PW22081 is to seek an amendment to two City policies: the Procurement Policy and the Capital Budget Pre-Approval Policy (“Policies”). The amendments to the Policies are being requested for two different circumstances:

- 1) to request an additional extension of six months for Procurement Policy Section 4.11, Policy #11 Non-Competitive Procurement to allow for negotiation of contracts in extenuating circumstances; and
- 2) to request that the Procurement Policy (Section 3 Definitions and Interpretations and Section 4.2, Policy #2 Approval Authority) and the Capital Pre-Approval Policy be amended to allow the procurement of replacement vehicles and associated vehicle equipment where funds have not been fully approved through annual budgetary process. The proposed amendments would be time limited (approximately 12 months in duration) in order to respond to recent vehicle industry volatility and supply shortage.

For clarity, Report FCS21103(a) / PW22081 uses sub-headings to differentiate the information pertaining to the amendment requests.

Amendment #1 – Allow for Negotiation of Contracts in Extenuating Circumstances

The purpose of this amendment is to request Council to approve a six-month extension to the Policy #11 amendment until May 1, 2023.

On November 10, 2021, Council approved Report FCS21103 / LS21045 and amended Procurement Policy #11, Policy 4.11 to allow staff the ability to negotiate price adjustments to contracts in extenuating circumstances due to market conditions. The approved amendment states the following:

**SUBJECT: Amendments to Procurement Policy and Capital Pre-Approval Policy
(FCS21103(a) / PW22081) (City Wide) – Page 3 of 13**

- “4 (a) That for the period up until November 1, 2022, for Contracts where the Goods and / or Services have been significantly impacted by extenuating circumstances within a commodity market to the extent where it may be necessary to consider a price adjustment in the Contract for that Good and / or Service, the General Manager (GM) of the Client Department in consultation with the General Manager of Finance and Corporate Services and the Manager of Procurement:
- i) may enter into negotiations with the vendor on an existing Contract where:
 - .1 the vendor has provided evidence and the Procurement Manager has verified that the commodity market for the Good and/or Service has resulted in unprecedented price fluctuations; and
 - .2 where the timely and continuous supply of the Good and / or Service is required;
 - ii) may execute any amendment to the Contract and any ancillary documents required to give effect thereto with the vendor, in a form satisfactory to the City Solicitor;
- (b) The City’s Director of Financial Services & Corporate Controller shall be responsible to prepare an annual information report to Council on all Contracts that have been amended as per subsection (4) of this Policy #11.
- (c) Where the annual increase in costs resulting from the amendment to the Contract exceeds \$250,000, be required to submit an information update to the City Manager and to Council for their information.”

This amendment in the Procurement Policy is set to expire on November 1, 2022. Staff is requesting Council’s approval to continue the delegated authority until May 1, 2023. Staff requires additional time to complete their due diligence with respect to current and outstanding requests that have been received from vendors, as well as, to allow additional time for future requests. As 2022 progresses and ultimately 2023 begins, staff fully expects that additional vendors (e.g. snowplow operators) may come forward and that it would be fair to consider these requests as well.

Amendment #2 – Allow for Pre-Purchase of Replacement Vehicles

The purpose of this amendment is to request Council to approve the time-limited changes to the Procurement Policy and the Capital Pre-Approval Policy (“Policies”), to allow the procurement of replacement vehicles and associated vehicle equipment where funds have not been fully approved through annual budgetary process.

The proposed amendments would be time limited (121 months in duration) in order to respond to recent vehicle industry volatility and supply shortage.

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**SUBJECT: Amendments to Procurement Policy and Capital Pre-Approval Policy
(FCS21103(a) / PW22081) (City Wide) – Page 4 of 13**

Alternatives for Consideration – See Page 12

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Amendment #1 - Allow for Negotiation of Contracts in Extenuating Circumstances

Financial: Capital budgets or annual operating budgets, as applicable, will incur additional expenses as a direct result of any price increases negotiated with the vendor. In each situation, Procurement staff will work closely with the Client Department and Finance to determine the appropriate process to bring new cost impacts forward for Council's consideration either via the Tax / Rate Operating Budget or Tax / Rate Capital Budget as applicable.

With respect to the eleven contracts that were opened, negotiated and approved by the General Manager of Public Works and the General Manager of Corporate Services at the time of Report, the total increase in cost is \$826,801.00. This amount represents the aggregate increase of all 11 contracts for the current term of each contract.

In accordance with subsection (4) of Procurement Policy #11, staff will prepare an annual information report to Council on all Contracts that have been amended, including applicable cost increases per contract.

Staffing: None.

Legal: Amendments to existing Contracts may be required to document any change in pricing or other terms and conditions negotiated with the vendors.

Amendment #2 – Allow for Pre-Purchase of Replacement Vehicles

Financial: The proposed temporary Capital Pre-Approval Policy change would allow commitments to be made for the purchase of replacement vehicles and any associated vehicle equipment from funds that have been included within years two through four of the most recent 10-year Capital Financing Plan. Unless deposits are required or delivery is made earlier than planned, there are no immediate financial implications. In the event that deposits are required, or pre-payment is needed in advance of formal funding approval, then Recommendation (c) to Report FCS21103(a) / PW22081 provides a financing strategy to address these situations.

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Council is advised that there is a budgetary risk that needs to be identified should the amendment to the Capital Pre-Approved Policy be approved. If purchase orders are issued for future capital requirements, the risk to the current year budgets would be low as payment would be in the future. However, a significant risk would be if future capital budgets are not approved, reduced, or if inflation exceeds current capital contributions. The operating budget risk is that increased costs for replacement vehicles will result in increases to future operating budgets to replenish the program reserves typically used for these purchases or to repay internal loans from corporate reserves where program reserve balances are insufficient.

Staffing: None.

Legal: None.

HISTORICAL BACKGROUND

Amendment #1 – Allow for Negotiation of Contracts in Extenuating Circumstances

In November 2021, staff submitted Report FCS21103 / LS21045 which gave several examples of City contracts that were being significantly affected by world commodity markets for Goods and Services. Council approved this report, giving staff the authority to open contracts where:

- “.1 the vendor has provided evidence and the Procurement Manager has verified that the commodity market for the Good and / or Service has resulted in unprecedented price fluctuations; and
- .2 where the timely and continuous supply of the Good and/or Service is required.”

and to negotiate price changes to ensure continuous supply.

Procurement staff has worked with various client departments to create a list of the requests and perform due diligence with respect to the validity of the pricing increase request. In their review, Procurement staff reviewed the following information at a minimum:

- a) the Goods and Services being provided;
- b) the vendor’s requested increase and the reasonableness of it;
- c) the commodities within those Goods and Services that were driving the increase (i.e. chemicals, fuel, methanol, etc.);
- d) the feasibility of bringing the Contract to an end and issuing a new competitive procurement;
- e) the importance to maintaining the continuous supply of the Good and Service that would make the issuance of a new competitive procurement detrimental to the City and its operations.

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**SUBJECT: Amendments to Procurement Policy and Capital Pre-Approval Policy
(FCS21103(a) / PW22081) (City Wide) – Page 6 of 13**

Once staff determined that opening and negotiating a price change in the contract was not only feasible but, in the City's, best interest, staff:

- a) calculated the variance in cost for that Good and Service based on the commodity market changes;
- b) calculated the overall annual cost increase per contract; and
- c) received approval from the applicable General Managers to proceed with the recommended contract price changes.

Amendment #2 – Allow for Pre-Purchase of Replacement Vehicles

It is widely known that since the onset of the pandemic there have been many supply chain pressures within the global market, particularly within the vehicle manufacturing sector for cars, trucks and large vehicles. These pressures have created shortages throughout the industry and caused unrepresented lead times in both vehicle and equipment production, leaving little to no inventory for the procurement of new, replacement vehicles that the City requires to provide critical services to the public. As a result, volatile material supply manufacturers are not releasing vehicle prices which has impacted the tendering process causing the City to extend tender closings or delay issuance of tenders for all class vehicles.

As previously stated in Report FCS21103 / LS21045, staff reported that it had received a request for a price change from a heavy-duty vehicle manufacturer due to an increase since the cost for materials used in the manufacturing of the vehicle's chassis and body (aluminum and steel) had tripled, creating, at times, a 45% increase on some items. Staff was also made aware that Ford Canada Fleet had made the decision to reduce its large fleet incentive from \$10,750 per unit to a maximum of \$4,500, directly increasing the overall cost of each vehicle.

The COVID-19 pandemic and recent supply chain issues have both contributed to a shortage and delay on microchips, affecting not only the chassis costs but also resulting in extensive lead and delivery times for products. Manufacturers have been forced to make model year changes and have resorted to closing their "bank order" times ahead of schedule. All of these events have been compounded by an increase in transportation costs, with increases ranging from 8 to 10 percentage from 2020 over 2021.

In working through this difficult supply situation, staff has experienced shortages or production delays for required chassis, specialized vehicles and equipment. Current orders for vehicles and equipment lifecycle replacements are either not being filled or are significantly delayed and future shortages are being communicated to departments from both vehicle manufacturers and dealerships. In particular, staff has been unable to secure supply for various chassis for many specialized vehicles, including garbage, snow plows, ambulances and buses.

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In its discussion with various vehicle dealers, staff has been advised that many vehicle manufacturers are requiring organizations to pre-purchase their vehicle requirements in order to reserve a spot in future production lines as the industry is moving to a “first ordered’ first delivered” system.

In addition to the extended delivery delays, dealers for various manufacturers are advising staff that they are not able to commit to any firm pricing for vehicle orders slated for future production and delivery.

Further to this, staff has been advised by many vehicle and chassis manufacturers and dealers that vendors are unable or unwilling to commit to pricing for orders received today for future production and delivery. In some instances, manufacturers are requesting deposits on procurement orders to commit the order on the production line.

Staff have two recent examples where vendors have made requests for deposits: ambulance manufacturer required a deposit of 30% per ambulance and an electric vehicle dealer required a deposit of 5% per electric vehicle. Both vendors indicated that these orders came with no guarantee of a delivery date.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Should the recommendations in Report FCS21103(a) / PW22081 be approved:

- 1) By-law 20-205, the City’s Procurement Policy, Section 3 Definitions and Interpretations, Section 2 Policy #2 Approval Authority and Section 4.11 Policy #11 Non-Competitive Procurements; and
- 2) Capital Budget Pre-Approval Policy (FCS01005 and updated through PW05117 / FCS05104)

will be amended as per Appendices “A” and “B” to Report FCS21103(a) / PW22081.

RELEVANT CONSULTATION

Amendment #1 – Allow for Negotiation of Contracts in Extenuating Circumstances

In performing its due diligence with respect to the opening and negotiating of contract, Procurement staff has had numerous consultations with the various Client Departments, many of which are within Public Works, including:

- Hamilton Water
- Environmental Services
- Energy, Fleet and Facilities
- Transportation Operations and Maintenance

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Amendment #2 – Allow for Pre-Purchase of Replacement Vehicles

Several divisions within the City have been consulted with respect to the pre-purchase of vehicles, including:

- Healthy and Safe Communities Department: Hamilton Fire Department and Hamilton Paramedic Services
- Public Works Department: Transit Division – Public Works
- Finance and Corporate Services Department: Financial Services

In addition to this, through the Ontario Public Buyers Association's network of members, the Manager of Procurement consulted with other municipalities and public sector agencies for their experiences and confirmation of similar difficulties respecting the procurement of vehicles. All feedback and comments received were consistent with Hamilton's experiences.

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

Amendment #1 – Allow for Negotiation of Contracts in Extenuating Circumstances

At the time of Report FCS21103(a) / PW22081, Procurement staff received 21 requests from vendors requesting price escalations, of which:

- In accordance with Procurement Policy #11 Non-Competitive Procurements, 11 contracts were opened, negotiated and recommended price increases were approved by the General Manager of Public Works (applicable General Manager for the Client group) and the General Manager of Corporate Services;
- Three contracts were not opened as staff determined that it was in the City's best interest to issue a new procurement process;
- One contract is being recommended to Council as a standardization under Procurement Policy #14; and
- Six contracts continue to be investigated.

Unfortunately, global markets have not settled as was initially anticipated at the time of Report FCS21103 / LS21045. Procurement staff continues to learn of new price escalations in various commodity markets. For example:

- a) on July 5, Procurement was made aware of supply chain issues regarding cement within the Ontario market. Significant raw material shortages, as well as, equipment breakdown in three of the five cement plants contributed to temporary suspension of sales;

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- b) prices for recent roofing repair request for tenders are coming in significantly higher than expected. Consultants have advised staff that roofing materials and associated labour have tripled in cost, creating a great disparity between estimated costs and bid prices received under tender;
- c) prices for metals, including steel and aluminium continue to climb. Vendors have informed Procurement staff that the Industrial Product Price Index for Fabricated Metal Products and Construction Materials went up from 122.5 in July 2021 to 144.5 by June 2022.

Considering continuing market fluctuations, staff is recommending that Procurement Policy #11 be amended to extend the time limitation stated in subsection (4) for six months until May 1, 2023. Since Council will be in a lame duck situation until a new Council is sworn into office in December, the time allotment for Policy #11 subsection (4) will expire and staff will not have the opportunity to continue its due diligence without further approval by Council. This extension will ensure staff is able to work continuously into the new year.

This extension of time will also allow Procurement staff to complete their investigation of the six outstanding contracts indicated above and determine if these requests are valid and supportable. Further to this as 2022 progresses and ultimately 2023 begins, staff is expecting that additional vendors (e.g. snowplow operators) may come forward with similar requests for a price increase for similar reasons as mentioned previously. To be fair to all vendors, Procurement staff would like the opportunity to consider any additional requests until May 1, 2023.

Staff is hopeful that the six-month extension is adequate time to allow the global markets to settle and hopefully subside. Should staff feel that a further extension is warranted past May 1, 2023, another report will be brought back to the Procurement Sub-Committee for their consideration and approval.

As required under Procurement Policy #11, subsection (4), staff will prepare an annual information report to Council on all Contracts that have been amended as per subsection (4) of this Policy #11 as well as submit an information update to the City Manager and to Council regarding any amendment to a Contract exceeding \$250,000.

Amendment #2 – Allow for Pre-Purchase of Replacement Vehicles

Current Policies and their Constraints

At the present time, the City's Capital Pre-Approval Policy and Procurement Policy both include constraints that do not allow for the pre-purchase of any good or service where all or more than 50% of the funds have not been previously approved by Council.

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OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

SUBJECT: Amendments to Procurement Policy and Capital Pre-Approval Policy (FCS21103(a) / PW22081) (City Wide) – Page 10 of 13

The Capital Pre-Approval Policy states:

“That City departments be authorized to tender and award replacement, repair or rehabilitation-type construction projects, in accordance with the approved purchasing policies and procedures, prior to the annual budget approval (e.g., the year 2017) up to:

1. 50% of the previous year's (e.g., 2016) capital budget for water, wastewater, storm sewers, waste management, community services, open space development & parks, planning, fleet & facilities, roads and transit projects which were approved in the first year of the previous year's capital forecast;
2. 50% of the previous year's capital budget for all other projects and services only if a specific project had been approved in the previous year's capital budget and the first year of the forecast (e.g., 2016 and 2017) and approved for construction”

Although the current Capital Pre-Approval Policy allows client departments to commit up to 50% of the preceding year's approved capital budget, the policy is such that it does not allow the pre-purchase of a good or service where more than 50% of the funds from the upcoming year were required or where all of the funds in any future year budget were required.

Furthermore, the City's Procurement Policy, Policy 4.2 – Approval Authority states:

“(1) Any person delegated Approval Authority pursuant to this Policy # 2 shall ensure that an approved budget exists for the proposed procurement and that such procurement does not violate any City policies or any applicable law. Any such procurement shall also satisfy any applicable audit requirements of the City.”

Therefore, a client department cannot proceed with procurement for a good or service where the funds have not been entirely approved either within the current or any past year's capital or operating budget (whichever is applicable).

Current Environment for the Procurement of Vehicles

Specialized vehicles like garbage trucks, transit vehicles, fire trucks and ambulances, if not replaced on current replacement schedules will incur additional high maintenance costs to keep them operational. All department vehicle and equipment maintenance budgets, rehabilitation cycles and refurbishing programs are being reviewed and adjusted by staff as more departments need to utilize equipment and vehicles past current replacement cycles or reactivate a decommissioned vehicle.

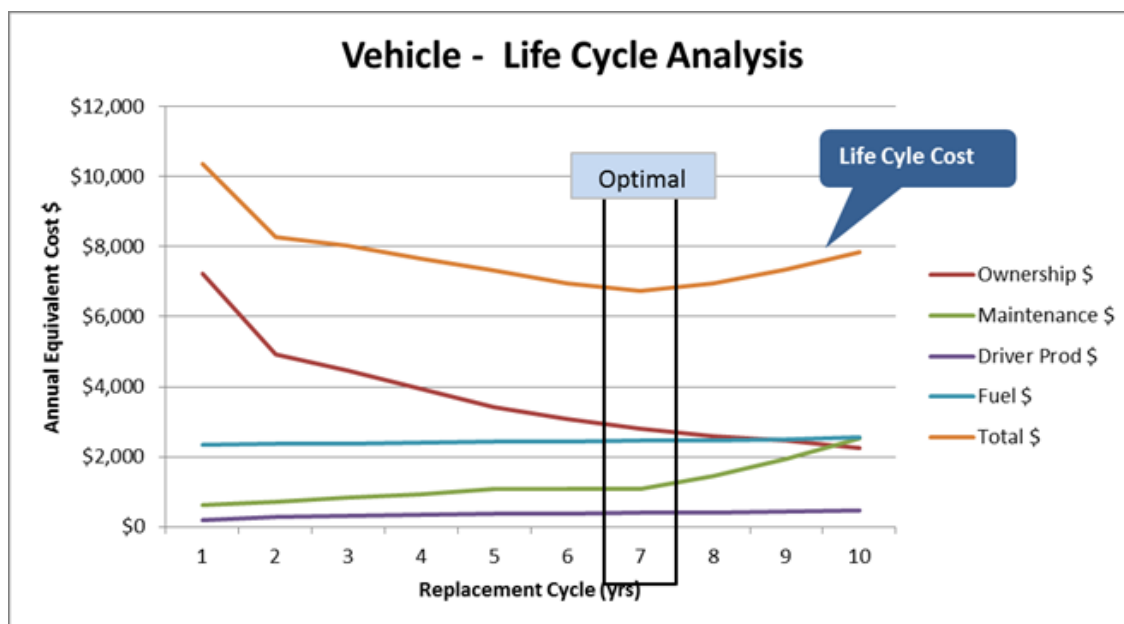
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SUBJECT: Amendments to Procurement Policy and Capital Pre-Approval Policy (FCS21103(a) / PW22081) (City Wide) – Page 11 of 13

Figure 1 illustrates the concept of a vehicle's life cycle analysis. The total life cycle costs (illustrated as the orange "Total \$" line) is the sum of other costs, including maintenance, the asset's depreciation value, fuel and driver productivity. As the vehicle ages and eventually reaches its retirement age (and older), the total life cycle cost of that vehicle increases.



Although the cost of fuel consumption and driver productivity remains relatively static, the additional maintenance costs of the vehicle required to keep the vehicle operational significantly increases, so much so as it can be seen as driving the total life cycle cost upward. Therefore, the ideal time to replace a vehicle would be before the rise in maintenance costs detrimentally impacts the overall ownership costs.

Proposed Amendment to Policies

For the City to maintain its fleet replacement plan, staff requires an amendment to both the Capital Pre-Approval and Procurement Policy to allow the continued procurement of replacement vehicles and their associated equipment. The amendments to these Policies are included as Appendix "A" and "B" to Report FCS21201(a) / PW22081 and include the following:

- 1) A time limitation of approximately 12 months for the amendment. Should staff continue to experience challenges stated within this report for the procurement of Vehicles, staff will request a further extension of the amendments from Committee and Council.

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**SUBJECT: Amendments to Procurement Policy and Capital Pre-Approval Policy
(FCS21103(a) / PW22081) (City Wide) – Page 12 of 13**

- 2) The following definition, based on the Ministry of Transportation definition of vehicle (“Vehicle”) will be added to the Procurement Policy under Section 3, Definitions and Interpretation:

“**Vehicle** - a motor vehicle, trailer, traction engine, farm tractor, roadbuilding machine or any vehicle drawn, propelled or driven by any kind of power, including muscular power.”

This definition will add clarity and provide clear guidelines as to what will be considered a “vehicle”.

- 3) The amendment only pertains to the replacement of Vehicles, and any associated Vehicle equipment. The amendments to the Policies will not apply to any new or additional Vehicles that need to be procured.
- 4) The proposed temporary Capital Pre-Purchase policy change would allow commitments to be made for the purchase.
- 5) As well, the Vehicles to be procured will be committed from funds that have been included within years two through four of the most recent 10-year Capital Financing Plan. Unless deposits are required or delivery is made earlier than planned, there are no immediate financial implications. In the event that deposits are required, or pre-payment is needed in advance of formal funding approval then Recommendation (c) to Report FCS21103(a) / PW22081 provides a financing strategy to address these situations.

ALTERNATIVES FOR CONSIDERATION

Amendment #1 – Allow for Negotiation of Contracts in Extenuating Circumstances

Council may choose to not approve the recommendations in Report FCS21103(a) / PW22081 with respect to Amendment #1. Any requests for price increases by vendors, including those that have not been fully investigated prior to November 1, 2022 or any new requests will not be considered further and will be denied.

If this alternative is chosen, City staff is cognizant that by declining the vendor’s request for an increase in price in these extenuating situations, there is the risk that a vendor may choose to abandon the Contract as opposed to absorbing the price increases. If a vendor abandons a Contract, staff will be required to source another vendor on very short notice and quite possibly pay a premium for those services.

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**SUBJECT: Amendments to Procurement Policy and Capital Pre-Approval Policy
(FCS21103(a) / PW22081) (City Wide) – Page 13 of 13**

Amendment #2 – Allow for Pre-Purchase of Replacement Vehicles

Council may choose to not approve the recommendations in Report FCS21103(a) / PW22081 with respect to Amendment #2 and going forward, any procurement for Vehicles shall be carried out in accordance with the current Policies. Should any procurement require additional funds not previously approved by Council, staff will submit a report to Council requesting the additional funds be appropriated or alternatively, staff will cancel the Procurement until the funds have been previously approved through the budgetary process.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**Community Engagement and Participation**

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report FCS21103(a) / PW22081 – Amendments to the City’s Procurement Policy

Appendix “B” to Report FCS21103(a) / PW22081 – Amendment to the City’s Capital Pre-Approval Policy

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Appendix “A” to Report FCS21103(a)/PW22081
Page 1 of 2

Appendix “A” to Report FCS21103(a)/PW22081 states the amendments to the City’s Procurement Policy

DEFINITIONS AND INTERPRETATION

SECTION 3

(Subsection to be added to the Procurement Policy)

“**Vehicle**” means a motor vehicle, trailer, traction engine, farm tractor, roadbuilding machine or any vehicle drawn, propelled or driven by any kind of power, including muscular power.”

POLICY # 2 – Approval Authority

SECTION 4.2

(Subsection to be revised in Procurement Policy)

- (1) Any person delegated Approval Authority pursuant to this Policy # 2 shall ensure that:
 - (a) an approved budget exists for the proposed procurement;
or
 - (b) that for the period up until October 1, 2023, the proposed procurement for a replacement Vehicle or it associated equipment is in accordance with the Capital Pre-Approval Policy, as amended through Report FCS21103(a)/PW22081.

and that such procurement does not violate any City policies or any applicable law. Any such procurement shall also satisfy any applicable audit requirements of the City.

Appendix “A” to Report FCS21103(a)/PW22081
Page 2 of 2

POLICY # 11 - Non-competitive Procurements

SECTION 4.11

(Subsection to be revised in Procurement Policy)

- (4) (a) That for the period up until May 1, 2023, for Contracts where the Goods and/or Services have been significantly impacted by extenuating circumstances within a commodity market to the extent where it may be necessary to consider a price adjustment in the Contract for that Good and/or Service, the General Manager of the Client Department in consultation with the General Manager of Finance and Corporate Services and the Manager of Procurement:
- i) may enter into negotiations with the vendor on an existing Contract where:
 - .1 the vendor has provided evidence and the Procurement Manager has verified that the commodity market for the Good and/or Service has resulted in unprecedented price fluctuations; and
 - .2 where the timely and continuous supply of the Good and/or Service is required;
 - ii) may execute any amendment to the Contract and any ancillary documents required to give effect thereto with the vendor, in a form satisfactory to the City Solicitor.
- (b) The City’s Director of Financial Services, Taxation & Corporate Controller shall be responsible to prepare an annual information report to Council on all Contracts that have been amended as per subsection (4) of this Policy #11.
- (c) Where the annual increase in costs resulting from the amendment to the Contract exceeds \$250,000, be required to submit an information update to the City Manager and to Council for their information.”

Appendix “B” to Report FCS21103(a)/PW22081
Page 1 of 2

Appendix “B” to Report FCS21103(a)/PW22081 states the amendment to the City’s Capital Pre-Approval Policy as highlighted in yellow for clarity.

THE CITY OF HAMILTON

CORPORATE SERVICES DEPARTMENT
CAPITAL BUDGETS & DEVELOPMENT

CAPITAL PRE-APPROVAL POLICY

FCS01005

Updated through FCS21103/PW22081

As written (years referenced updated):

THAT, City departments be authorized to tender and award replacement, repair or rehabilitation-type construction projects, in accordance with the approved purchasing policies and procedures, prior to the annual budget approval (e.g., the year **2023**) up to:

1. 50% of the previous year's (e.g., **2022**) capital budget for water, wastewater, storm sewers, waste management, community services, open space development & parks, planning, fleet & facilities, roads and transit projects which were approved in the first year of the previous year’s capital forecast **or where a project is planned and budgeted over the course of two or more years and the first year of construction has already been approved, the pre-approval policy applies to subsequent years;**
2. 50% of the previous year's capital budget for all other projects and services only if a specific project had been approved in the previous year’s capital budget and the first year of the forecast (e.g., **2022 and 2023**) and approved for construction; and
3. **Notwithstanding items 1 and 2 above, for replacement vehicles (“Vehicles” as defined under the Procurement Policy) and associated Vehicle equipment, for the period up to October 1, 2023, 100% of the budgeted amounts in years 2 through 4 of the most recent 10-year Capital Financing Plan may be tendered and awarded. Interim financing to fund deposits or other pre-payment requirement under this section would be sourced first from program reserves and second through an internal loan from the Unallocated Capital Reserve (#108020) with repayment terms consistent with our Internal Loan Guidelines.**

Appendix “B” to Report FCS21103(a)/PW22081
Page 2 of 2

What does it mean?

The policy applies to all projects/programs within the water, wastewater, storm sewers, waste management, community services, open space development & parks, planning, fleet & facilities, roads and transit divisions.

The pre-approval policy for capital projects allows departments to commit up to 50% (or 100% in the temporary case of replacement vehicles and equipment as noted in Item 3) of the preceding year’s approved capital budget on replacement, repair or rehabilitation projects that were previously identified for the upcoming budget year (i.e., forecasted in the prior year’s budget).

Where a project, other than those listed above, is planned and budgeted over the course of two or more years and the first year of construction has already been approved, the pre-approval policy applies to subsequent years of the project.