



# Hamilton

## **Procurement Sub-Committee**

**REPORT 17-001**

**1:30 p.m.**

**April 3, 2017**

**Room 264, 2<sup>nd</sup> Floor**

**Hamilton City Hall**

**71 Main Street West**

**Kirsten Stevenson, Legislative Coordinator, 905-546-2424 x5987**

---

**Present:** Councillors L. Ferguson (Chair), D. Conley (Vice-Chair), and J. Partridge

**Absent with Regrets:** Councillor T. Whitehead – City Business

---

**1. 2017 Interim Proposed Procurement Policy Review and Proposed Amendments (FCS17033) (City Wide) (Item 8.1)**

- (a) That the City of Hamilton Procurement Policy, attached as Appendix “A” to Report FCS17033, be approved **as amended**:

Policy #3 - Specifications, Section 4.3, Sub-section (1)(e)(iii) be to read as follows:

- (iii) and where a vendor is retained or is anticipated to be retained to complete preliminary design or development work, Client Departments shall engage the Procurement Section **during the preliminary planning stages of the project** to determine if follow-on or multi-phase assignments are anticipated and to determine the appropriate competitive procurement process to be used and whether a report to Council is necessary with respect to the project;
- (b) That the By-law attached as Appendix “A”, **as amended** to the April 3, 2017 Procurement Sub-Committee, Report 17-001, which has been prepared in a form satisfactory to the City Solicitor, be enacted.

FOR THE INFORMATION OF COUNCIL:

(a) **CHANGES TO THE AGENDA (Item 1)**

The Committee Clerk indicated there were no changes to the agenda.

The agenda for the April 3, 2017 meeting was approved as presented.

(b) **DECLARATIONS OF INTEREST (Item 2)**

None

(c) **MINUTES (Item 3)**

(i) **February 24, 2016**

The Procurement Sub-Committee Minutes of the February 24, 2016 Meeting were received.

(d) **DISCUSSION ITEM (Item 6)**

(i) **2017 Interim Proposed Procurement Policy Review and Proposed Amendments (FCS17033) (City Wide) (Item 8.1)**

Tina Iacoe, Procurement Manager, addressed the Committee with an overview of the 2017 Interim Proposed Procurement Policy and Proposed Amendments. Ms. Iacoe outlined the proposed amendments and answered questions from the Committee.

Appendix "A", Procurement Policy, Policy #3 - Specifications, Section 4.3, Sub-section (1)(e)(iii) was amended by adding the phrase "**during the preliminary planning stages of the project**" to the third line, after the words "the Procurement Section" to read as follows:

- (iii) and where a vendor is retained or is anticipated to be retained to complete preliminary design or development work, Client Departments shall engage the Procurement Section **during the preliminary planning stages of the project** to determine if follow-on or multi-phase assignments are anticipated and to determine the appropriate competitive procurement process to be used and whether a report to Council is necessary with respect to the project;

For further disposition of this matter, refer to Item 1.

(e) **ADJOURNMENT (Item 12)**

That there being no further business the Procurement Sub-committee was adjourned at 2:36 p.m.

Respectfully submitted,

Lloyd Ferguson, Chair,  
Procurement Sub-Committee

Kirsten Stevenson,  
Legislative Coordinator

**Authority:** Item 17, Audit, Finance and  
Administration Committee  
Report 17-005  
(FCS17033)  
CM: April 10, 2017

**Bill No. XXX**

## **CITY OF HAMILTON**

### **BY-LAW NO. 17-XXX**

#### **A By-law to Adopt and Maintain a Procurement Policy for the City of Hamilton**

**WHEREAS** paragraph 270(1)3 of the *Municipal Act*, 2001, S.O. 2001, c. 25 provides that a municipality shall adopt and maintain a policy with respect to its procurement of goods and services;

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

1. Schedule "A", which is attached to and forms part of this By-law, is the City of Hamilton procurement policy adopted and maintained in accordance with paragraph 270(1)3 of the *Municipal Act*, 2001.
2. The short title of this by-law shall be the "Procurement Policy By-law".
3. By-law No. 16-070 is repealed.
4. This by-law comes into force on the day it is passed.

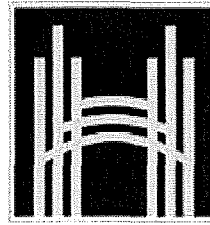
**PASSED and ENACTED** this XX day of XXXXXX, 2017.

---

Fred Eisenberger  
Mayor

---

Rose Caterini  
City Clerk



Hamilton

# Procurement Policy

City of Hamilton

By-Law No. XX-XXX

Procurement Section • Financial Services  
Corporate Services

**TABLE OF CONTENTS**

**PROCUREMENT MISSION AND VISION ..... 3**  
**PROCUREMENT GOALS & OBJECTIVES ..... 4**  
**RESPONSIBILITIES & PROHIBITIONS OF PROCURING GOODS AND/OR SERVICES ..... 5**  
**DEFINITIONS AND INTERPRETATION ..... 7**  
**PROCUREMENT POLICY..... 11**  
    POLICY # 1 - Vendor Eligibility..... 11  
    POLICY # 2 - Approval Authority..... 16  
    POLICY # 3 - Specifications ..... 21  
    POLICY # 4 - Prequalification of Vendors..... 23  
    POLICY # 5 - Determining the Procurement Process ..... 24  
        POLICY # 5.1 - Low Dollar Value Procurements ..... 25  
        POLICY # 5.2 - Request for Quotations..... 26  
        POLICY # 5.3 - Request for Tenders (\$100,000 and greater)..... 27  
        POLICY # 5.4 - Request for Proposals (\$10,000 and greater)..... 29  
    POLICY # 6 - Unsolicited Proposals ..... 32  
    POLICY # 7 - Construction Contracts ..... 33  
    POLICY # 8 - Vendor Performance Evaluation..... 34  
    POLICY # 9 - Consulting and Professional Services ..... 35  
    POLICY # 10 – Emergency Procurements ..... 36  
    POLICY # 11 - Non-competitive Procurements ..... 37  
    POLICY # 12 - Cooperative Procurements..... 38  
    POLICY # 13 - Authority to Execute Contracts ..... 39  
    POLICY # 14 - Standardization ..... 40  
    POLICY # 15 - Participation of Elected City Officials in the Procurement Process..... 41  
    POLICY # 16 - Disposal of Surplus and Obsolete Goods ..... 42  
    POLICY # 17 - Conflicts of Interest..... 43  
    POLICY # 18 - Vendor Complaint Resolution..... 44  
    POLICY # 19 – Non-compliance with the Procurement Policy..... 45  
    POLICY # 20 – Review of the Procurement Policy ..... 46  
    POLICY # 21 – Anti-Sweatshop Procurement ..... 47  
    POLICY # 22 – In-House Bid Submissions..... 49  
**SCHEDULE A – Statement of Ethics for Public Procurement..... 50**  
**SCHEDULE B – Exemptions ..... 51**

## PROCUREMENT MISSION AND VISION

---

### Mission

---

To ensure that the procurement function meets the current and future needs of the corporation, provides an economical and efficient service and is considered a value-added partner in the securing of Goods and/or Services for the corporation.

---

### Vision

---

A team of resourceful skilled professionals, working in partnership with their customers to procure the best Goods and/or Services in the most efficient manner.



## PROCUREMENT GOALS & OBJECTIVES

### SECTION 1

- (1) Procure the necessary quality and quantity of Goods and/or Services in an efficient, timely and cost effective manner, while maintaining the controls necessary for a public agency, in accordance with the Procurement Policy as approved by Council.
- (2) Encourage an open and competitive bidding process for the acquisition and disposal of Goods and/or Services, and the objective and equitable treatment of all vendors.
- (3) Ensure the best value of an acquisition is obtained. This may include, but not be limited to, the determination of the total cost of performing the intended function over the lifetime of the task, acquisition cost, installation, disposal value, disposal cost, training cost, maintenance cost, quality of performance and environmental impact.
- (4) Procure Goods and/or Services with due regard to the preservation of the natural environment and to encourage the use of "environmentally friendly" products and services, as supported by Vision 2020 goals and strategies.

## RESPONSIBILITIES & PROHIBITIONS OF PROCURING GOODS AND/OR SERVICES

### SECTION 2

#### (1) General Responsibilities

- (a) All City of Hamilton elected officials and staff delegated with the authority to procure shall comply with the Procurement Policy for the City of Hamilton. Without limiting the foregoing, such elected officials and staff shall follow the Statement of Ethics for Public Procurement attached as Schedule A to the Procurement Policy, the City's Code of Conduct for Employees Policy and Policy # 17 – Conflicts of Interest.
- (b) Procurement activities shall be subject to all applicable City of Hamilton policies and by-laws, any specific provisions of the *Municipal Act, 2001* and all other relevant Federal and Provincial legislation, as may be in effect from time to time.

#### (2) Procurement Section Responsibilities

The City's General Manager of Finance and Corporate Services shall operate a Centralized Procurement unit on behalf of the City of Hamilton in accordance with the requirements of the Procurement Policy. In carrying out this responsibility the General Manager of Finance and Corporate Services may appoint certain City staff to act on behalf of the City in entering into Contracts with third parties. The General Manager of Finance and Corporate Services may limit the authority to procure of that City staff, as deemed appropriate. The Procurement Section will therefore have the following specific responsibilities:

- (a) Be responsible for the administration of the Procurement Policy and will continually review the procurement of Goods and/or Services to ensure the City is receiving the best value.
- (b) Ensure that procurement transactions are conducted ethically and professionally in accordance with Schedule A – Statement of Ethics for Public Procurement.
- (c) Advise on the practicability of Specifications to ensure a maximum number of competitive Bids.
- (d) Notify vendors who have expressed an interest in doing business with the City of the availability of the procurement documents.
- (e) Prepare necessary procurement documents and process Purchase Orders.
- (f) Advise and assist in the preparation of Contracts when requested.
- (g) Provide training and documentation on how to use the procurement module to users of the City's financial software application. Make available copies of the Procurement Policy and Procurement Procedures and Guidelines to all relevant City staff.

Maintain records of procurement transactions as required.

#### (3) General Manager Responsibilities

- (a) Ensure all purchases are performed in accordance with the Procurement Policy and make required reports to the Council or any other interested party explaining why purchases are not in compliance with the Procurement Policy. The Procurement Section will offer advice and assistance in assuring that the

Procurement Policy is adhered to upon request.

- (b) Delegate Approval Authority to the appropriate levels and maintain the responsibility for such actions including answering questions raised by such delegation.
- (c) Ensure appropriate action is taken on internal Audit Services recommendations.

(4) Internal Audit Responsibilities

Internal Audit Services shall conduct selected audits to ascertain adherence to the Procurement Policy. The Procurement Section and Council shall receive a copy of the audit results.

(5) Procurement Sub-Committee Responsibilities

The Procurement Sub-Committee shall:

- (a) Review and give input to the biennial report recommending any changes to the Procurement Policy in accordance with Policy #20 – Review of the Procurement Policy.
- (b) Be delegated the authority to impose an interim ban upon a vendor in accordance with Policy #1 – Vendor Eligibility.

(6) Prohibitions

The following activities are prohibited, unless specifically approved by Council:

- (a) Any attempt to evade or circumvent the requirements of the Procurement Policy including, but not limited to, the division of purchases to avoid the requirements of the Procurement Policy by any method, which includes purchases made using procurement cards.
- (b) Purchase by the City of any Goods and/or Services for personal use by or on behalf of any member of Council, employees of the City and their immediate families.
- (c) The acceptance of gifts, benefits, money, discounts, favours or other assistance by any member of Council, employees of the City, and their families contrary to the City of Hamilton Code of Conduct for Members of Council (Appendix H to the City's Procedural By-law No. 10-053, as amended, repealed or replaced from time to time), the City's Code of Conduct for Employees Policy or such other similar policy currently in force. The image and integrity of the employee and the City of Hamilton must be preserved at all times.
- (d) Purchase by the City from any member of Council or employee of the City, their family members or from any other source, that would result in a conflict of interest, unless that interest has been declared pursuant to the *Municipal Conflict of Interest Act* or pursuant to the City's Code of Conduct for Employees Policy or such other similar policy currently in force.

(7) Exemptions

Those items listed in Schedule B - Exemptions, are exempt from the requirements of the Procurement Policy, save and except for Policy # 2 - Approval Authority.

## DEFINITIONS AND INTERPRETATION

### SECTION 3

Words and phrases used in the Procurement Policy for the City of Hamilton have the following meanings, unless expressly stated otherwise:

**"Acquisition Method"** means the process by which Goods or Services are procured.

**"Approval Authority"** means the authority to approve and award procurements, as well as any assignment or corporate change requests related to such procurements, up to the procurement values for the respective body or person(s) set out in Policy # 2 - Approval Authority.

**"Approved Products Listing"** means the listing of approved Goods for use with road, watermain, sewer, lighting and traffic signal work as maintained by the City's Standard and Approved Products Committee.

**"Authorized Delegate"** means the person who has been delegated by Council an Approval Authority and includes any other person further sub-delegated such Approval Authority in accordance with the Procurement Policy. An Authorized Delegate includes a person authorized to act on their behalf temporarily.

**"Bid"** means an offer or submission from a vendor in response to a Request for Quotations, Request for Tenders, Request for Proposals, Request for Rostered Candidates or Request for Prequalifications issued by the City.

**"Centralized Procurement"** refers to the activities conducted by the Procurement Section of the City's Corporate Services Department, which facilitates the purchase of all Goods and/or Services in accordance with the requirements of the Procurement Policy.

**"Child"** means any person under the age of 15, unless local minimum age law stipulates a higher age for work or mandatory schooling, or under the age of 14 if minimum age law is set at that age in accordance with exceptions set out for developing countries under International Labour Organization ("ILO") Convention 138.

**"City"** means the City of Hamilton.

**"City Event"** means an event organized and hosted by the City.

**"City Manager"** means the City Manager of the City of Hamilton.

**"Client Department"** means the City department initiating the acquisition of the Goods and/or Services.

**"Consulting and Professional Services"** means services rendered by members of a recognized profession or possessing a special skill. Such services are generally acquired to obtain information, advice, training or direct assistance.

**"Contract"** means a legal agreement between two or more parties, usually written, or a Purchase Order.

**"Cooperative Procurement"** means coordination of City purchases with purchases of other government bodies, public authorities, conservation authorities, municipalities, academia, schools

and hospitals (MASH) sector and not-for-profit organizations.

**"Council"** means the Council of the City of Hamilton.

**"Emergency"** means a situation, or the threat of an impending situation, which may affect the environment, life, safety, health and/or welfare of the general public, or the property of the residents of the City, or to prevent serious damage, disruption of work, or to restore or to maintain essential service to a minimum level.

**"Energy Commodities"** means electricity, Green Power, natural gas, methane and all other petroleum based fuel products such as: diesel, bio-diesel, unleaded, fuel oil, propane and any other bulk commodity primarily used by the City for the purpose of heating and cooling of buildings and other structures, electricity generation, cogeneration and the fuelling of City fleets, as determined by the City's Manager of Energy Initiatives.

**"General Manager"** means the head of a City department or person authorized to act on their behalf temporarily, and includes the Medical Officer of Health and the City Manager.

**"Goods"** includes supplies, equipment, materials, products, structures and fixtures to be delivered, installed or constructed.

**"Green Power"** means electricity generated from renewable energy sources, such as certified water power, solar, biogas, biomass and wind. Other terms for Green Power include: Green Power certificates, tradable renewable certificates or "Green Tags". These attributes, embodied in a certificate, may be bought and sold either bundled or unbundled with commodity electricity.

**"Joint Venture"** means an association of two or more persons who combine their expertise and resources in a single joint business enterprise to qualify, bid, and perform the Contract. Joint Ventures, sometimes referred to as a consortium, may take the form of a partnership or special purpose vehicle. All persons of a Joint Venture must be eligible persons.

**"Low Dollar Value Procurements"** means the process of procuring Goods and/or Services with an estimated annual procurement cost of up to but not including \$10,000.

**"Lowest Compliant Bid"** means a Bid with the lowest price meeting all requirements of a RFQ, RFP or RFT, subject to any rights or privileges reserved by the City contained in the respective procurement document, or unless otherwise approved by Council.

**"Mixed Revenue Contracts"** means a combination of various types of Revenue Generating Contracts.

**"Manager of Procurement"** means the Manager of Procurement for the City of Hamilton or a person authorized to act on behalf of the Manager of Procurement on an interim basis.

**"Procurement Policy"** means the procurement policies approved by Council, as amended from time to time.

**"Procurement Procedures and Guidelines"** means the procurement procedures and guidelines approved by the City's Director of Financial Services & Corporate Controller, as amended from time to time.

**"Profit Sharing Contracts"** means contracts whereby the City receives a portion of revenues, sales or profits earned by a third party under contract with the City.

**"Purchase Order"** means a written offer to procure Goods and/or Services or a written acceptance of an offer, in a form acceptable to the City Solicitor.

**"Purchase Requisition"** means an internal online request by a Client Department to the Procurement Section for procurement of Goods and/or Services.

**"Request for Information"** or **"RFI"** means a process where information is requested from vendors regarding their interest in, or the feasibility and availability of, specific Goods and/or Services in the marketplace and to determine if there are enough vendors to justify a Request for Proposals or Request for Tenders. An Expression of Interest or "EOI" shall be considered an RFI.

**"Request for Prequalifications"** means a process where information is requested from vendors to determine whether or not the vendor has the capability in all respects to perform the contract requirements. The Request for Prequalifications process is initiated before a RFP or RFT is issued and only prequalified vendors are eligible to submit a Bid on such procurements.

**"Request for Proposals"** or **"RFP"** means a formal request for prices and details on Goods and/or Services from vendors, where the Goods and/or Services may not be able to be fully defined or specified or when alternate methods are being sought to perform a certain function or service, at the time of the request.

**"Request for Quotations"** or **"RFQ"** means an informal request for prices on Goods and/or Services with an estimated procurement cost between \$10,000 and up to but not including \$100,000, and where comprehensive technical Specifications can be developed. Request for Quotations may be processed by the Client Department.

**"Request for Roster Candidates"** or **"RFRC"** means a procurement document issued by the City requesting pricing and details with respect to category specific consulting services from vendors, with the intent of creating an approved list of vendors known as rostered candidates, and whereby work assignments under a specific cost limit will be offered by the City to said rostered candidates on an as-needed basis over a two-year period.

**"Request for Tenders"** or **"RFT"** means a formal request for prices on Goods and/or Services from vendors, where the Goods and/or Services are able to be fully defined or specified at the time of the request.

**"Revenue Generating Contracts"** means a legal agreement between the City and a third party that yields a financial return for the City. Revenue Generating Contracts include, but are not limited to:

- (a) Service Revenue Contracts; and
- (b) Profit Sharing Contracts; and
- (c) Mixed Revenue Contracts; and
- (d) advertising Contracts.

**"Services"** means all professional, consulting, construction or maintenance services, as well as any other services described in a Contract or in a RFQ, RFT or RFP.

**"Service Revenue Contracts"** means the sale of Goods and/or Services by the City to a third party.

**"Specifications"** means the detailed description of, and written requirements and standards for, Goods and/or Services contained in a RFQ, RFP or RFT to the extent known or available to the Client Department, and also includes any drawings, designs and models.

**"Sponsorship"** means a financial contribution or in-kind contribution of goods or services provided to the City in return for recognition, and includes advertising sold in support of a City Event.

**"Standardization"** is a management decision-making process that examines a specific common need or requirement and then selects a Good and/or Service that best fills that need to become the standard.

**"Sweatshop"** means a facility where individuals manufacture, assemble or produce consumer goods in working conditions that constitute Sweatshop Conditions.

**"Sweatshop Conditions"** means working conditions that include any of the following:

- (a) employees are not provided with working conditions that: meet or exceed the International Labour Organization ("ILO") Conventions' standards governing forced labour (ILO Convention 29 – Forced Labour Convention, 1930) and (ILO Convention 105 - Abolition of Forced Labour Convention, 1957), child labour (ILO Convention 138 – Convention concerning Minimum Age for Admission to Employment – the "Minimum Age Convention, 1973" and United Nations Convention On The Rights Of The Child – November 20, 1989, Article 32), payment of wages (ILO Convention 95 - Protection of Wages Convention, 1949), hours of work, occupational health, occupational safety, and non-discrimination (ILO Convention 111 – Discrimination {Employment and Occupation, 1958}); and are in compliance with all applicable federal, state, provincial and local laws of the locality of manufacture; and
- (b) employees are compensated by their employer at an hourly rate below the poverty threshold; and
- (c) employees are subject to forced labour practices, whether in the form of involuntary prison labour, indentured labour, bonded labour or otherwise; and
- (d) employees under the age of 18 are exposed to situations, in or outside the workplace, that are hazardous, unsafe or unhealthy; and
- (e) employees are not provided with a minimum of one day off for every seven-day period; and
- (f) employees are subject to physical, sexual, psychological abuse or harassment, verbal abuse, or any other form of abuse, including corporal punishment; and
- (g) employees are not provided with a safe and hygienic workplace, including access to clean toilet facilities and safe drinking water.

**"Time-Sensitive"** means a situation for which the timing to complete the procurement is paramount, but the time available to follow normal procedures is insufficient.

**PROCUREMENT POLICY**  
**POLICY # 1 - Vendor Eligibility**

**SECTION 4.1**

- (1) The City will make reasonable efforts to maintain an electronic vendor database of those vendors who have expressed an interest in doing business with the City and who have completed an online registration form.
- (2) Without limiting or restricting any other right or privilege of the City and regardless of whether or not a Bid otherwise satisfies the requirements of a Request for Prequalifications, RFP or RFT, the City may reject any Bid from a vendor where,
  - (a) in the opinion of the City, the commercial relationship between the City and the vendor has been impaired by the act(s) or omission(s) of such vendor including but not limited to any one or more of the following having occurred within the five year period immediately preceding either the date on which the RFP or RFT is awarded or the date on which the vendor has been shortlisted pursuant to a Request for Prequalifications:
    - (i) the vendor being involved in litigation with the City;
    - (ii) act(s) or omission(s) resulting in a claim by the City under any security submitted by the vendor on a RFP or RFT, including but not limited to a bid bond, a performance bond, or warranty bond;
    - (iii) the failure of the vendor to pay, in full, all outstanding payments (and, where applicable, interest and costs) owing to the City by such vendor, after the City has made demand for payment of same;
    - (iv) the vendor's refusal to follow reasonable directions of the City or to cure a default under any Contract with the City as and when required by the City;
    - (v) the vendor's refusal to enter into a Contract with the City after the vendor's Bid has been accepted by the City;
    - (vi) documented poor performance of a vendor as per Policy # 8 – Vendor Performance Evaluation, including the vendor's refusal to perform or to complete performance of a Contract with the City;
    - (vii) the vendor having unlawfully or unreasonably threatened, intimidated, harassed, or otherwise interfered with an attempt by any other prospective vendor to bid for a City Contract or to perform any Contract awarded by the City to that vendor;
    - (viii) the vendor having discussed or communicated, directly or indirectly, with any other vendor or their agent or representative about the preparation of the vendor's Bid including, but not limited to, any connection, comparison of figures or arrangements with, or knowledge of any other vendor making a Bid for the same work except in the instance of a Joint Venture where one is permitted.
    - (ix) the vendor having unlawfully or unreasonably threatened, intimidated, harassed, assaulted or committed battery against, or otherwise interfered with an official, employee, representative, agent or independent consultant or contractor of the City in the performance of his or her duties or in any way attempted to influence such persons;



- (x) the vendor has on one or more occasions, in the performance of a Contract with the City, deliberately, with wilful blindness or negligence, save and except an inadvertent error corrected to the satisfaction of the City within a reasonable time, as determined by the City,
    - 1. over-billed, double-billed and/or retained a known over-payment, or has failed to notify the City of an over-payment or duplicate payment;
    - 2. billed for items not supplied;
    - 3. billed for items of one grade, while supplying items of an inferior grade;
    - 4. made a misrepresentation as to the quality or origin of Goods, their functionality or suitability for a purpose, or their performance characteristics;
    - 5. submitted false or misleading information to the City;
    - 6. acted in conflict with the City's interests;
    - 7. misappropriated any property or right of the City, in any form; or
    - 8. committed any other form of sharp or deceptive practice;
  - (xi) any other act or omission by the vendor that the City deems to impair the commercial relationship between the City and the vendor.
- (b) in the opinion of City there are reasonable grounds to believe that it would not be in the best interests of the City to enter into a Contract with the vendor, including but not limited to:
- (i) the conviction of that vendor or any person with whom that vendor is not at arm's length within the meaning of the *Income Tax Act* (Canada) of an offence under any taxation statute in Canada;
  - (ii) the conviction or finding of liability of that vendor under the *Criminal Code* or other legislation or law, whether in Canada or elsewhere and whether of a civil, quasi-criminal or criminal nature, of moral turpitude including but not limited to fraud, theft, extortion, threatening, influence peddling and fraudulent misrepresentation;
  - (iii) the conviction or finding of liability of that vendor under any environmental legislation, whether of Canada or elsewhere, where the circumstances of that conviction evidence a gross disregard on the part of that vendor for the environmental well-being of the communities in which it carries on business;
  - (iv) the conviction or finding of liability of that vendor relating to product liability or occupational health or safety, whether of Canada or elsewhere, where the circumstances of that conviction evidence a gross disregard on the part of that vendor for the health and safety of its workers or customers;
  - (v) the conviction or finding of liability of that vendor under the financial securities legislation whether of Canada or elsewhere, where the circumstances of that conviction evidence a gross disregard on the part of that vendor for its stakeholders.
- (3) For the purposes of subsections (2), (4), (5), (6), (7)(d), (8), (9) and (10) of this Policy # 1, a reference to a vendor shall also include: an officer, a director, a majority or controlling shareholder, or a member of the vendor, if a corporation; a partner of the vendor, if a partnership; any corporation to which the vendor is an affiliate of or

successor to, or an officer, a director or a majority or controlling shareholder of such corporation; a Joint Venture; and any person with whom that the vendor is not at arm's length within the meaning of the *Income Tax Act* (Canada).

- (4) In the circumstances described in subsections (2) and (9), the City may, in addition or in the alternative to rejecting a Bid from a vendor, ban a vendor from competing for or being awarded any City Contract for a period of up to ten years
- (5) Without limiting or restricting any other right or privilege of the City, the City may refuse to enter into a Contract with a vendor where any of the circumstances described in (2)(a), (2)(b) or (9) of this Policy # 1 have occurred within the five year period preceding the date on which the refusal to enter into the Contract is approved by Council. In addition or in the alternative to refusing to enter into the Contract, the City may ban a vendor from competing for or being awarded any City Contract for a period of up to ten years.
- (6) Except with the prior express written consent of the City,
  - (a) a vendor and its representatives shall not act on behalf of the City with respect to any matter, issue or in connection with any property in which the vendor or any employee or subcontractor of the vendor has a direct or indirect pecuniary interest, including any contingent interest;
  - (b) a vendor shall not act in any case where there may be any conflict of interest between it and the City, and each vendor shall notify the City, in writing, immediately of any potential conflict of interest that may arise prior to the award of any contract and fully disclose any details thereof;
  - (c) before submitting any Bid to act on behalf of the City, the vendor shall exercise reasonable due diligence to confirm that there is no conflict of interest within the contemplation of this subsection; and
  - (d) failure on the part of a vendor to declare a conflict of interest to the City and to obtain the City's prior express written consent to waive the conflict of interest shall result in the vendor being ineligible to Bid and shall form a basis for rejection of a Bid submitted to the City.
- (7) Where the Contract is awarded to a vendor who has made an unauthorized amendment to the City's pre-printed forms (e.g. *Form of Proposal* or *Form of Tender*) or other documents submitted as part of the vendor's Bid, then within a reasonable time of the City discovering that unauthorized amendment, the City may,
  - (a) permit the vendor to withdraw an unauthorized amendment to the City's *Form of Proposal* or *Form of Tender*, at no cost to the City; or
  - (b) cancel or terminate the Contract without any compensation whatsoever to the vendor by giving written notice to that effect to the vendor; or
  - (c) recover from such vendor any amounts the City paid to the vendor and all costs, expenses, damages and losses incurred or accrued by the City as a result of the unauthorized amendment; or
  - (d) ban such vendor from competing for or being awarded any City Contract for a period of up to ten years where, in the opinion of Council, the change was made by the vendor as part of a deliberate attempt to deceive and such deception has

resulted in an impairment of the commercial relationship between the City and such vendor,

or any combination of the foregoing.

- (8) Where a vendor has the Lowest Compliant Bid to a RFT or RFP or has the successful Bid in accordance with the evaluation methodology set out in a RFP, which Bid has been rejected due to the vendor's failure to initial a legible change such as an erasure, strike out, white out, cross out or overwriting, within one business day of the City's request, the vendor shall also be banned from competing for or being awarded any City Contract for a period of one year. Only the ban, and not the rejection of the Bid, may be challenged by the vendor in accordance with Policy # 18 – Vendor Complaint Resolution.
- (9) No Lobbying and Single Point of Contact
- (a) A vendor and its representatives shall not,
- (i) make any public comment, respond to questions in a public forum, or carry out any activities to publicly promote or advertise their qualifications, their service or product, or their interest in a RFQ/RFP/RFT/RFRC/Request for Prequalifications.
  - (ii) communicate with the City regarding a RFQ/RFP/RFT/RFRC/Request for Prequalifications except through the Manager of Procurement or designate identified in the RFQ/RFP/RFT/RFRC/Request for Prequalifications, who shall be the single point of contact for that procurement document.
  - (iii) Having a single point of contact for the RFQ/RFP/RFT/RFRC/Request for Prequalifications is intended to allow all other persons involved with the RFQ/RFP/RFT/RFRC/Request for Prequalifications on behalf of the City to avoid any perception of a conflict of interest and to conduct the procurement set out in the RFQ/RFP/RFT/RFRC/Request for Prequalifications in as fair and objective a manner as possible.
  - (iv) make any attempt to contact, directly or indirectly, any of the following persons, with respect to a RFQ/RFP/RFT/RFRC/Request for Prequalifications,
    - 1. any member of an evaluation team;
    - 2. any member of a costing team;
    - 3. any expert, independent consultant or other advisor assisting the City;
    - 4. any elected City official;
    - 5. any staff of the City of Hamilton or its advisors; or
    - 6. any other persons connected in any way with the procurement document
- until such time when the RFQ/RFP/RFT/RFRC/Request for Prequalifications is cancelled or awarded.
- (b) The only exception to the above for a vendor or its representatives is as set out at Policy # 18 – Vendor Complaint Resolution if the vendor has a complaint related to the evaluation of its Bid and/or recommendation of award with respect to the procurement document.
- (c) A vendor who has been awarded a Contract shall not engage in any contact or activities in an attempt to influence any elected City official or City staff with respect to the purchase of additional enhancements, requirements, options, or modules. A vendor may communicate with the City and City staff for the

purposes of administration of the Contract during the term of the Contract.

The determination of what constitutes an attempt to influence shall be at the sole discretion of the City, acting reasonably, and is not subject to challenge under Policy # 18 - Vendor Complaint Resolution.

- (10) Where the Manager of Procurement has demonstrated and the Procurement Sub-Committee is satisfied that there is sufficient evidence of act(s) or omission(s) described in this Policy #1 on the part of a vendor, the Procurement Sub-Committee may impose an interim ban upon the vendor from competing or being awarded any City Contract, under the following circumstances:
- (a) while an investigation is being conducted by the Manager of Procurement;
  - (b) while there is documented poor performance or non-performance that has not been resolved to the City's satisfaction and which has impaired the commercial relationship between the City and the vendor such that the vendor ought to be precluded from submitting bids on other contracts until the vendor performance issues have been rectified; or
  - (c) when a vendor has been found to be in breach of a City Contract and which breach has impaired the commercial relationship between the City and the vendor such that an interim ban is necessary in order to preclude the vendor from submitting bids on other contracts pending litigation or a final ban.

The interim ban may be imposed for a period of up to 12 months. The Procurement Sub-Committee's decision shall be final with respect to the interim ban.

- (11) Where an interim ban is imposed under subsection (10), the Manager of Procurement shall, prior to the expiry of the interim ban, report to the appropriate standing committee of Council the status of the investigation and any recommendations for further action.

## POLICY # 2 - Approval Authority

### SECTION 4.2

- (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.
- (2) The following body and persons shall have the respective Approval Authority as set out below:
  - (a) **Council** must approve budgetary funding for any procurement of a value of \$250,000 or greater.
  - (b) **City Manager** must approve any procurement of a value of \$100,000 up to but not including \$250,000. The City Manager may sub-delegate such Approval Authority to his/her staff, who are referred to as an Authorized Delegate in the table below, at the procurement values he/she deems appropriate. Staff who have been further delegated Approval Authority from the City Manager to approve procurements **shall have no authority to** delegate this Approval Authority to any other person. The City Manager may also exercise the Approval Authority of a General Manager.
  - (c) **General Managers** are authorized to approve procurements of a value up to but not including \$100,000, save and except for Policy #9 – Consulting and Professional Services and in an Emergency wherein Policy # 10 Emergency Procurements shall apply. **Only** General Managers may sub-delegate such Approval Authority to their staff, who are referred to as an Authorized Delegate in the table below, at the procurement values they deem appropriate. Staff who have been further delegated Approval Authority from their General Manager to approve procurements **shall have no authority to** delegate this Approval Authority to any other person.
  - (d) The following chart indicates the approval authorities for various Procurement Policies in accordance with this Policy #2 as well as the persons having the authority to execute contracts in accordance with Policy #13 Authority to Execute Contracts.

<b>PROCUREMENT POLICY</b>		<b>ESTIMATED PROCUREMENT VALUE</b> (\$, Canadian Funds, exclusive of applicable taxes)	<b>APPROVAL AUTHORITY POLICY #2</b>	<b>AUTHORITY TO EXECUTE CONTRACTS POLICY #13 *</b>
Policy # 5.1	Low Dollar Value Procurements	Up to but not including \$10,000	General Manager or Authorized Delegate	Person who exercised the Approval Authority for the procurement.
Policy # 5.2	Request for Quotations	\$10,000 to \$99,999	General Manager or Authorized Delegate	Person who exercised the Approval Authority for the procurement.
Policy # 5.4	Request for Proposals	\$10,000 to \$99,999	General Manager or Authorized Delegate unless any of the conditions in subsection (3) of Policy #2 apply, then Council approval is required.	General Manager and City Manager
Policy # 5.3	Request for Tenders	\$100,000 to \$249,999	City Manager or Authorized Delegate unless any of the conditions in subsection (3) of Policy # 2 apply, then Council approval is required.	General Manager and City Manager
Policy # 5.4	Request for Proposals		For linear construction Contracts issued in conjunction with the Public Works Department, the General Manager of Public Works or Authorized Delegate unless any of the conditions in subsection (3) of Policy # 2 apply, then Council approval is required.	

PROCUREMENT POLICY	ESTIMATED PROCUREMENT VALUE (\$, Canadian Funds, exclusive of applicable taxes)	APPROVAL AUTHORITY POLICY #2	AUTHORITY TO EXECUTE CONTRACTS POLICY #13 *
<p>Policy # 5.3 Request for Tenders</p> <p>Policy # 5.4 Request for Proposals</p>	<p>\$250,000 or greater</p>	<p>Council</p> <p>a) where the funds to procure the goods and services have been previously approved through the budget process;</p>	<p>General Manager and City Manager</p>
<p>b) for all other Contracts;</p> <p>c) where any of the conditions in subsections (3) and (4) of Policy # 2 apply.</p>		<p>City officials named in the Council resolution shall execute such Contracts on behalf of the City. Where City officials have not been named in the Council resolution, the Mayor and Clerk shall execute such Contract</p>	
<p>For linear construction Contracts issued in conjunction with the Public Works Department, the General Manager of Public Works or Authorized Delegate unless any of the conditions in subsection (3) of Policy # 2 apply, then Council approval is required.</p>		<p>General Manager of Public Works and City Manager</p>	
<p>Policy # 7 Construction Contracts (applicable to existing contracts with unexpected circumstances)</p>	<p>\$10,000 or greater</p>	<p>General Manager (Policy #7 <i>Construction Contracts Form</i>)</p>	<p>Where the existing contract requires a formal amendment, same persons as existing contract.</p>

PROCUREMENT POLICY	ESTIMATED PROCUREMENT VALUE (\$, Canadian Funds, exclusive of applicable taxes)	APPROVAL AUTHORITY POLICY #2	AUTHORITY TO EXECUTE CONTRACTS POLICY #13 *
Policy # 10 Emergency Procurements	\$10,000 or greater	General Manager	General Manager
Policy # 11 Non-competitive Procurements (single source)	Up to but not including \$250,000	General Manager	General Manager
	\$250,000 or greater	Council	City officials named in the Council resolution shall execute such Contracts on behalf of the City. Where City officials have not been named in the Council resolution, the Mayor and Clerk shall execute such Contract.

\*(persons authorized to execute the Contract and all necessary associated documents. Includes persons in an acting position)

- (3) The Client Department in conjunction with the Procurement Section shall submit a report to Council and the appropriate standing committee recommending award of a RFT or RFP if **ANY** of the following conditions apply:
- (a) the value of the Bid being recommended for award and any contingency allowance are in excess of the Council approved budget including any contingency allowance, or
  - (b) for capital projects, when the final cost of the proposed project exceeds the amount provided in the Council approved capital budget for that project by \$250,000 or greater, or
  - (c) for RFTs, the award is not being made for the Lowest Compliant Bid, or
  - (d) for RFPs, the award is not being made in accordance with evaluation methodology set out in the RFP, or
  - (e) where in the opinion of the City Manager, the Client Department's award recommendation is not in the best interest of the City, or
  - (f) there are Provincial or Federal government requirements for Council approval.
- (4) The Client Department shall submit a report to Council and the appropriate standing **Procurement Policy for the City of Hamilton**  
Approved By City Council On: XXXX XX, 2017



committee recommending a single source procurement of \$250,000 or greater in accordance with Policy #11 – Non-competitive Procurements.

- (5) Council may delegate further Approval Authority as it considers necessary from time to time, including but not limited to, any extended time periods during which Council does not meet.
- (6) The City's Director of Financial Services & Corporate Controller shall prepare a quarterly status report to Council on Request for Tenders and Request for Proposals which shall identify those procurements:
  - (a) which have been issued, but not yet closed,
  - (b) which have closed and are under review, and
  - (c) which have been awarded or cancelled,since the previous status report.
- (7) The issuance and approval of award of a Revenue Generating Contract of any value requires the approval of the General Manager of the Client Department. It will be at the discretion of the General Manager of the Client Department whether to also seek Council approval on the issuance and/or approval of award of a Revenue Generating Contract.
- (8) Acceptance of a Sponsorship of any value requires the approval of the General Manager of the Client Department. It will be at the discretion of the General Manager of the Client Department whether to also seek Council approval on the City's acceptance of a Sponsorship.

## POLICY # 3 - Specifications

### SECTION 4.3

- (1) The following requirements shall be followed in the preparation of the Specifications:
  - (a) Specifications are to be detailed but not brand specific, unless standardized in accordance with Policy # 14 – Standardization to maintain a competitive procurement process.
  - (b) Where the Specification requirements of the Client Department will result in a single source purchase, the Client Department shall follow Policy # 11 – Non-competitive Procurements.
  - (c) Where the Specifications relate to matters that are addressed under the Corporate Energy Policy, they shall be approved by the City's Manager of Energy Initiatives to ensure that they meet the requirements of said policy.
  - (d) Client Departments shall advise the Information Technology Division of procurements that relate to new software purchases and shall comply with the Corporate Computer and Technology Acceptable Use Policy and Security Policies. Specifications shall be approved by Director of Information Technology or Authorized Delegate to ensure that they meet the requirements of said policies.
  - (e) Vendors or potential vendors shall not be requested to expend time, money or effort on design or in developing Specifications or otherwise to help define a requirement beyond the normal level of service expected from vendors. Where such services are required,
    - (i) the Manager of Procurement must be advised;
    - (ii) the contracted vendor will be considered a consultant and will not be allowed to make an offer of the supply of the Goods and/or Services;
    - (iii) and where a vendor is retained or is anticipated to be retained to complete preliminary design or development work, Client Departments shall engage the Procurement Section during the preliminary planning stages of the project to determine if follow-on or multi-phase assignments are anticipated and to determine the appropriate competitive procurement process to be used and whether a report to Council is necessary with respect to the project;
    - (iv) a fee shall be paid, the amount of which shall be determined and agreed upon by the vendor before the services commence; and
    - (v) the detailed Specifications shall become the property of the City, and can be used in obtaining Bids.
  - (f) Notwithstanding any assistance in the preparation of the Specifications by a consultant, the Specifications shall be and remain the property of the City.
  - (g) Where it is not possible to prepare precise Specifications to issue a Request for Tenders, a Request for Proposals shall be issued. The Client Department, in cooperation with the Procurement Section, shall prepare evaluation criteria and weightings for the criteria. The RFP shall clearly distinguish those requirements that are deemed mandatory and non-mandatory and shall clearly outline how these items will be evaluated.
  - (h) When preparing the Specifications, the Client Department shall be knowledgeable of the *Ontarians with Disabilities Act, 2001*, the *Accessibility for*

*Ontarians with Disabilities Act, 2005* and their regulations thereunder, as amended, re-enacted or replaced from time to time, and the City's Barrier Free Design Guidelines 2006 or the most recent version and apply those requirements with respect to procuring Goods and/or Services and in the development of the Specifications.

- (i) When preparing the Specifications, the Client Department shall consider the amount of packaging that would be associated with the procurement of a Good. If the required level of packaging is felt to be too excessive, then the Specifications for those Goods will require the vendor to be responsible for and bear the cost for the removal and disposal of the packaging materials.
- (2) The preparation of the Specifications for Request for Quotations, Request for Proposals or Request for Tenders shall be the responsibility of the Client Department. Specifications shall be approved by the Client Department Authorized Delegate and shall be forwarded directly to the Procurement Section with approval attached.
- (3) The Procurement Section shall have the authority to review and recommend improvements to the Specifications when deemed necessary. The Client Department shall cooperate with the Procurement Section in the finalization of the Specifications. Should the Procurement Section and the Client Department not be able to reach agreement on Specifications within the allotted timeline, the General Managers of the Client Department and of Finance and Corporate Services Department will attempt to resolve the matter.
- (4) The City may issue a Request for Information or RFI through Centralized Procurement. A RFI can be used to determine if there is sufficient vendor interest to justify proceeding with a competitive procurement process and/or to gain additional information on the Good and/or Service from the vendor community. Any resulting competitive procurement process will be issued in accordance with Policy # 5 – Determining the Procurement Process.

## **POLICY # 4 - Prequalification of Vendors**

### **SECTION 4.4**

- (1) The purpose for prequalification of vendors is to ensure that each vendor intending to perform work on a City Contract can demonstrate its ability to provide the necessary expertise and resources to satisfactorily complete the work required.
- (2) Prequalification of vendors shall be issued through Centralized Procurement and will only be considered in the following circumstances:
  - (a) the work will require substantial project management by the City if the vendor is not appropriately experienced and could result in a substantial cost to the City;
  - (b) the Goods and/or Services to be purchased must meet national safety standards;
  - (c) the work involves complex, multi-disciplinary activities, specialized expertise, equipment, materials, or financial requirements;
  - (d) there could be a substantial impact on City operations if the work is not satisfactorily performed the first time;
  - (e) where time requirements necessitate efficient use of time and expertise;
  - (f) any other circumstances deemed appropriate by the Manager of Procurement.
- (3) Prequalification requires vendors to provide such information as requested by the City to determine that the vendor has the capability in all respects to perform the contract requirements. This information may include such things as:
  - (a) previous experience on similar work (firm and staff assigned);
  - (b) capacity to fulfill the contract requirements; and
  - (c) the facilities and/or equipment to perform the work.
- (4) Vendor submissions will be evaluated, ranked, and a list of prequalified vendors will be established.

## POLICY # 5 - Determining the Procurement Process

### SECTION 4.5

- (1) Sales taxes, excise taxes, value added taxes, duties and shipping shall be excluded in determining the procurement limit of Authorized Delegates and the type of procurement process to be followed.
- (2) The dollar values identified in this Procurement Policy represent the **annual** estimated procurement value for a Good and/or Service to be procured. The annual estimated procurement value is the cumulative value of a particular Good and/or Service in one calendar year. For multi-year Contracts, the estimated total procurement value over the term of the Contract, including any renewal periods, shall be used as the basis for determining which procurement process and Approval Authority applies.
- (3) It should be the intent of the Client Department to procure Goods and/or Services of like nature as a combined effort.
- (4) Where Provincial and/or Federal Governments impose unique requirements in order to qualify for funding, the City's procurement documents will be amended to include those provisions.
- (5) Where there is an incumbent vendor on a corporate City Contract which is of a highly sensitive nature due to the risk associated with financial loss, confidentiality or the handling of sensitive information, a report shall be forwarded to the applicable standing committee of Council and Council to seek direction on the type of procurement process to be followed for the acquisition of the Good and/or Service.
- (6) Where the estimated gross revenue for a Revenue Generating Contract is \$10,000 or greater, the Revenue Generating Contract shall follow the RFP or RFT process through Centralized Procurement.

Service Revenue Contracts of any value shall be exempt from the public procurement processes outlined in the Procurement Policy, save and except Policy # 2 – Approval Authority and Policy # 13 – Authority to Execute Contracts. Mixed Revenue Contracts are not exempt.

In the event that a Revenue Generating Contract falls under more than one City Policy, both Policies must be adhered to unless that Contract and/or the other City Policy is specifically exempted from the Procurement Policy.

**POLICY # 5.1 - Low Dollar Value Procurements  
(up to but not including \$10,000)**

**SECTION 4.5.1**

- (1) Client Departments shall utilize all applicable City Contracts and shall otherwise be in accordance with the Procurement Policy.
- (2) The General Managers may delegate Approval Authority to their staff for Low Dollar Value Procurements. This procurement function has been de-centralized and therefore, it is the responsibility of the respective General Manager to ensure that the Procurement Policy is adhered to.
- (3) Neither a RFQ, RFP nor RFT is required for Low Dollar Value Procurements.

**POLICY # 5.2 - Request for Quotations  
(\$10,000 – up to but not including \$100,000)**

**SECTION 4.5.2**

- (1) Client Departments shall utilize all applicable City Contracts and shall otherwise be in accordance with the Procurement Policy.
- (2) For procurements where there are no applicable City Contracts, a Request for Quotations process is used by the Client Department in the following manner:
  - (a) a minimum of three compliant Bids shall be obtained by any method of written communication unless otherwise approved by the Procurement Section;
  - (b) in seeking the vendors for Request for Quotations, staff shall also use the electronic vendor database;
  - (c) Bids must be received from a minimum of three separate vendors;
  - (d) a "No Bid" response shall not be considered a valid Bid;
  - (e) all vendors shall receive the same Request for Quotations written information;
  - (f) the Request for Quotations shall be awarded to the Lowest Compliant Bid; and
  - (g) all written Bids shall be retained in the Client Department files in accordance with City By-law No. 11-040 (To Establish Retention Periods for Records of the City of Hamilton), as amended, re-enacted or replaced from time to time.

The Manager of Procurement may waive the requirement for three Bids, but will only do so where the Client Department has demonstrated to the satisfaction of the Manager of Procurement that a minimum of three Bids cannot be obtained.

- (3) Any multi-year Request for Quotations, including any contract with option(s) to extend, issued by the Client Department must be reviewed and approved by the Procurement Section prior to the RFQ being issued. As well, all Bids received in response to a multi-year Request for Quotations and any award recommendation shall also be reviewed by the Procurement Section to ensure compliance with the RFQ this Policy #5.2.
- (4) Staff is encouraged to seek more than the minimum three written Bids to ensure a more competitive process and to utilize any Request for Quotations template provided by the Procurement Section.
- (5) In the event that two or more identical Bids are received and are the Lowest Compliant Bids, best and final offers will be solicited from each of these vendors in order to break the tie. If this effort is unsuccessful, then a draw will be held to determine the successful vendor.
- (6) The Procurement Section shall assist when requested by the Client Department, or when deemed necessary, with the Request for Quotations process.
- (7) An authorized online Purchase Requisition shall be utilized to initiate a Purchase Order and/or formal Contract process.
- (8) When a Client Department would like to issue a RFP in lieu of a Request for Quotations, the RFP shall be issued by the Procurement Section in the same manner as for Requests for Proposals in Policy # 5.4 of the Procurement Policy.

**POLICY # 5.3 - Request for Tenders (\$100,000 and greater)**

**SECTION 4.5.3**

- (1) Client Departments shall utilize all applicable City Contracts and shall otherwise be in accordance with the Procurement Policy.
- (2) For procurements where there are no applicable City Contracts,
  - (a) the Request for Tenders process is to be used for Goods and/or Services with an estimated procurement value of \$100,000 or greater and where comprehensive technical Specifications can be developed;
  - (b) the Request for Tenders process shall be carried out by Centralized Procurement;
  - (c) all Requests for Tenders shall be issued and awarded in accordance with the tendering procedures as determined by the City's Director of Financial Services;
  - (d) the Request for Tenders shall be awarded based on the Lowest Compliant Bid. In the event that two or more identical Bids are received and are the Lowest Compliant Bids, best and final offers will be solicited from each of these vendors in order to break the tie. If this effort is unsuccessful, then a draw will be held to determine the successful vendor.
- (3) When no compliant Bids are received in response to a Request for Tenders, and
  - (a) where time permits, in the opinion of the General Manager of the Client Department, the Request for Tenders shall be re-issued with the appropriate revisions; or
  - (b) where only one Bid has been received, the Manager of Procurement in conjunction with the Client Department may proceed to negotiate the changes required to achieve an acceptable Bid, provided that such changes will not alter the general nature of the procurement described in the Request for Tenders; or
  - (c) where time does not permit the re-issuance of the Request for Tenders in the opinion of the General Manager of the Client Department, and the Request for Tenders is not otherwise being revised, all vendors who submitted a Bid or secured the original Request for Tenders shall be given the opportunity to submit a new Bid. The Procurement Section will communicate to each vendor who previously submitted a Bid, any deficiencies that resulted in its Bid being deemed non-compliant. This process may utilize a post-closing addendum; or
  - (d) where time does not permit the re-issuance of the Request for Tenders, and the Request for Tenders is being revised, all vendors who submitted a Bid or secured the Request for Tenders, shall be given the opportunity to submit a new Bid. The Procurement Section will communicate to each vendor who previously submitted a Bid, any deficiencies that resulted in its Bid being deemed non-compliant. This process may utilize a post-closing addendum. The General Manager of the Client Department shall approve this process prior to implementation.
- (4) Where one or more Bids have been received and are in excess of budgeted funds, the General Manager of the Client Department in consultation with the Manager of Procurement may enter into negotiations with the vendor submitting the Lowest Compliant Bid, where it is agreed that the changes required to achieve an acceptable Bid will not



change the general nature of the requirement described in the RFT.

- (5) The Goods and/or Services shall be procured through a Purchase Order, Contract process and/or any other process as approved by the Director of Financial Services & Corporate Controller. Where a formal Contract is necessary, such Contract shall be in a form satisfactory to the City Solicitor.
- (6) Where a Time-Sensitive situation occurs, the Manager of Procurement may authorize the Client Department to utilize the Policy # 5.2 - Request for Quotations in lieu of the Request for Tenders process.

## POLICY # 5.4 - Request for Proposals (\$10,000 and greater)

### SECTION 4.5.4

- (1) The Client Departments shall utilize all applicable City Contracts and shall otherwise be in accordance with the Procurement Policy.
- (2) For procurements where there are no applicable City Contracts,
  - (a) the Request for Proposals process is to be used for Goods and/or Services with an estimated procurement value of \$10,000 or greater and where comprehensive technical Specifications cannot be fully defined or specified, or when alternate methods are being sought to perform a certain function or service, at the time of the request;
  - (b) the Request for Proposals process must be implemented through Centralized Procurement;
  - (c) the Request for Proposals shall be issued and awarded in accordance with the RFP procedures as determined by the City's Director of Financial Services & Corporate Controller;
  - (d) the Request for Proposals shall clearly set out the evaluation criteria and weightings upon which an award of the Request for Proposals may be made. Subject to minor variations as may be approved by the Manager of Procurement, the evaluation methodologies that may be employed, are:
    - (i) **FIXED PRICE.** The City establishes a fixed dollar value for the award, and the Bids consist of only a technical Bid for that fixed dollar value. The City evaluates the technical Bids received against the evaluation criteria and weightings set out in the RFP. The award shall be made to the highest scoring vendor; or
    - (ii) **PRICE PER POINT.** The evaluation of the RFP will utilize a multi-step evaluation process. The City evaluates the technical Bids received against the evaluation criteria and weightings set out in the RFP. For those technical Bids that successfully meet the benchmark score stipulated in RFP, the City will open the price Bid received. The City will then calculate the price per point for each Bid meeting the technical benchmark score and the award will be made to the vendor with the lowest price per point; or
    - (iii) **COMBINATION OF TECHNICAL AND PRICE SCORES.** The RFP will utilize a multi-step evaluation process. The City evaluates the technical Bids received against the evaluation criteria and weightings set out in the RFP. For those technical Bids that successfully meet the benchmark score stipulated in RFP, the City will open the price Bid received and score the price based on a predetermined calculation set out in the RFP. The price weighting must be a minimum of 25 percent of the technical weighting. Only the General Manager of the Client Department may approve a price weighting of less than 25 percent of the technical weighting. A total evaluation score will be determined by adding the technical score and the price score. The award shall be made to the highest scoring vendor; or

- (iv) **LOWEST PRICED BID MEETING TECHNICAL BENCHMARK SCORE.**  
The RFP will utilize a multi-step evaluation process. The City evaluates the technical Bids received against the evaluation criteria and weightings set out in the RFP. For those technical Bids that successfully meet the benchmark score stipulated in the RFP, the City will open the price Bid received. The award shall be made to the vendor who has successfully met the technical benchmark score and has the lowest priced Bid.

Where an evaluation methodology other than the above is proposed, specific Council approval shall be obtained.

- (3) The Procurement Section will facilitate the RFP evaluation process. An evaluation committee will be formed with a minimum of three evaluators and be comprised of at least one representative from the Client Department. The evaluators shall review all compliant Bids against the established criteria, reach consensus on the final rating results, and ensure that the final rating results with supporting documents are kept in the procurement file. The Procurement Section representative shall not participate in the scoring of the Bid;
- (4) All Bids that meet the required terms, conditions and Specifications outlined in the Request for Proposals document shall be evaluated based on the evaluation criteria and weightings, subject to any rights or privileges reserved by the City;
- (5) Any award shall be made in accordance with the evaluation criteria and weightings contained in the Request for Proposals document, subject to any rights or privileges reserved by the City or as otherwise approved by Council.
- (6) When no compliant Bids are received in response to a Request for Proposals, and
  - (a) where time permits in the opinion of the General Manager of the Client Department, the Request for Proposals shall be re-issued with the appropriate revisions; or
  - (b) where time does not permit the re-issuance of the Request for Proposals in the opinion of the General Manager of the Client Department, the Request for Proposals is not otherwise being revised, and the non-compliance is associated with the pricing portion of the multi-two step evaluation process, all vendors who have successfully passed the technical proposal requirements of the Request for Proposals shall be given the opportunity to submit a new price Bid only. The Procurement Section will communicate to each of these vendors, any Bid deficiencies that resulted in its Bid being deemed non-compliant. This process may utilize a post-closing addendum.
- (7) Where only one Bid has been received in response to a Request for Proposals and
  - (a) is non-compliant; or
  - (b) has successfully passed the technical proposal requirements and the Bid is non-compliant,

the Manager of Procurement in conjunction with the Client Department may proceed to negotiate the changes required to achieve an acceptable Bid, provided that such changes will not alter the general nature of the requirement described in the Request for Proposals.

- (8) Where the Bid being recommended for award is in excess of budgeted funds, the General Manager of the Client Department in consultation with the Manager of Procurement may enter into negotiations with the vendor submitting that Bid, provided that it is agreed by both the City and the vendor that the changes required to achieve an acceptable Bid will not alter the general nature of the requirement described in the RFP.
  
- (9) Except where another process is approved by the Director of Financial Services & Corporate Controller, the Goods and/or Services shall be procured through a Purchase Order and/or Contract process. Where a formal Contract is necessary, such Contract shall be in a form satisfactory to the City Solicitor.

## **POLICY # 6 - Unsolicited Proposals**

### **SECTION 4.6**

- (1) If it is determined that there is a legitimate need for the Goods and/or Services offered by way of an unsolicited proposal, then an acquisition process shall be conducted in accordance with the Procurement Policy.

## POLICY # 7 - Construction Contracts

### SECTION 4.7

- (1) Where the procurement of Goods and/or Services involves construction, such construction Contracts must also meet the requirements of the Procurement Policy. However, construction Contracts of \$100,000 or greater also require both a Purchase Order and a written legal agreement, in a form satisfactory to the City Solicitor.
- (2) Construction Contracts are subject to the City's Fair Wage Policy and Fair Wage Schedule. The Fair Wage Policy and Fair Wage Schedule can be accessed on the City of Hamilton website under the Procurement Section.
- (3) For an approved construction Contract in which an unexpected circumstance arises during construction resulting in additional construction work, the General Manager of the Client Department may authorize the payment for such work and approve any required purchase acquisition documents, including a completed *Construction Contracts Form*.
- (4) Where additional consultancy work is required to oversee or administer the additional construction work referred to in subsection (3), and the consultancy services were not issued as a Policy #9 Consulting and Professional Services roster assignment, Policy #10 Emergency - Procurements or Policy #11-Non-competitive Procurement, the General Manager of the Client Department may authorize the payment for such consultancy work and approve any required purchase acquisition documents, including a completed *Construction Contracts Form*.
- (5) The *Construction Contracts Form* shall detail what additional construction or consultancy work was required to address the unexpected circumstances. Such additional work shall not expand the scope of the work but shall have been determined to be necessary in order to deliver the original approved work.

## POLICY # 8 - Vendor Performance Evaluation

### SECTION 4.8

- (1) At the completion of every Contract for Goods and/or Services of \$100,000 or greater, the Client Department shall complete a *Vendor Performance Evaluation Form*. The General Manager of the Client Department shall ensure this performance evaluation is completed for these Contracts. Such evaluation shall be completed and a copy will be forwarded to the Procurement Section.
- (2) In the event of poor performance or non-performance of a vendor at any time during the term of any City Contract, the General Manager or an Authorized Delegate of the Client Department shall complete and forward a copy of the *Vendor Performance – Incident Reporting Form* as soon as reasonably possible after the occurrence.
- (3) Documented poor performance or non-performance on any City Contract will be used to determine the eligibility of a vendor to continue to provide Goods and/or Services to the City on a current Contract and to determine their ability to participate on future City Contracts. Any vendor may be excluded from a bidding process due to documented poor or non-performance, where in the opinion of the Procurement Sub-Committee or Council, the commercial relationship between the City and such vendor has been impaired .
- (4) The City's Public Works Department shall be responsible for the vendor performance evaluation process with respect to linear construction Contracts issued by that department under Policy # 7 – Construction Contracts in a format which includes feedback from area residents and elected officials.
- (5) In the event of a vendor's breach of a City Contract, the Manager of Procurement in consultation with the Client Department shall have the discretion to either:
  - (a) re-issue the RFQ, RFT or RFP; or
  - (b) negotiate and enter into a new Contract for the remainder of the Contract with the second lowest bidder of the original RFT or RFP,whichever is in the best interests of the City.

## **POLICY # 9 - Consulting and Professional Services**

### **SECTION 4.9**

- (1) Unless otherwise provided, Consulting and Professional Services shall be acquired in accordance with the Procurement Policy.
- (2) A Consulting and Professional Services roster will be established every two years through a formal Request for Rostered Candidates process. Work assignments presented to vendors on an approved list (rostered candidates) will be distributed on a rotational basis as well as a "best fit" basis and having an estimated procurement cost of less than \$150,000.
- (3) The General Manager of the Client Department shall award such works by direct appointment through the applicable roster captain. The applicable roster captain shall ensure that there is a reasonably equitable distribution of the works, based on the total dollar value of the work. This method allows the City to employ a number of different consultants while matching the particular talents of a consultant to the project needs.
- (4) The General Manager of the Client Departments and the Manager of Procurement shall approve the appointment of rostered candidates and any acceptable subsequent change in any rostered candidate for their respective roster categories in accordance with the Request for Rostered Candidate document.
- (5) The General Managers of the Client Departments shall be responsible to prepare a joint annual information report to Council on all assignments awarded including consultants used and a breakdown of the total cost utilized by each roster category.



## POLICY # 10 – Emergency Procurements

### SECTION 4.10

- (1) Where in the opinion of the General Manager of the Client Department, an Emergency exists, Goods and/or Services shall be acquired by the most expedient and economical means. The Procurement Section will provide cooperative assistance when requested to expedite any procurement documents necessary to deal with the Emergency. The General Manager of the Client Department shall provide the reasons for his or her opinion that an Emergency exists and shall approve any purchase acquisition document issued under such conditions. For amounts exceeding \$250,000, the General Manager shall issue an information update to the City Manager and to Council.
- (2) Subsequent to the resolution of the Emergency, all transactions require a Purchase Requisition to be entered to complete the procurement process. The Client Department shall complete the *Emergency Procurement Form* and forward it to the Manager of Procurement for informational purposes.

**POLICY # 11 - Non-competitive Procurements**

**SECTION 4.11**

- (1) Subject to Policy # 2 - Approval Authority, the General Manager of the Client Department will approve the *Non-competitive Procurement Form*, justifying the need to use this Policy # 11 prior to City staff entering into any discussions with any vendor regarding the purchase of the Goods and/or Services. This process may be adopted when any of the following conditions apply:
  - (a) when Goods and/or Services are judged to be in short supply due to market conditions (short supply);
  - (b) when a single source (for the purpose of this policy this shall include sole source transactions) for the supply of a particular Good and/or Service is being recommended because it is more cost effective or beneficial for the City (single source);
  - (c) where a City Contract has expired or will very shortly expire and unforeseeable circumstances have caused a delay in issuing a new RFP or RFT so that a Contract extension is required (contract extension).
- (2) Council must approve any requests for negotiations with a single source as set out in subsection (1)(b) of this Policy # 11, where the cumulative value of the Policy 11 exceeds a multi-year value of the proposed procurement is \$250,000 or greater. For greater clarity, the total cumulative value of a Policy 11 shall not exceed \$250,000 in any given year or multiple consecutive years.
- (3) All approved forms shall be forwarded to the Manager of Procurement. The Manager of Procurement will be responsible for reporting the use to Council on a quarterly basis.

<b>TOTAL CUMULATIVE VALUE (\$, Canadian, Not including tax)</b>	<b>APPROVAL TO INITIATE POLICY # 11 PROCESS</b>	<b>APPROVAL TO ENTER INTO CONTRACT</b>
\$10,000 or greater	General Manager	Policy # 2 – Approval Authority
\$250,000 or greater for single source type purchases	Council	Council as per Policy # 2 – Approval Authority

- (4) The Goods and/or Services shall be procured through a Purchase Order, a formal Contract or any other process as approved by the Director of Financial Services & Corporate Controller.
- (5) Where consultancy services are being procured and are in excess of \$100,000, a formal Contract shall be required.
- (6) All formal Contracts shall be in a form satisfactory to the City Solicitor.

## **POLICY # 12 - Cooperative Procurements**

### **SECTION 4.12**

- (1) The City may participate with other government bodies, public authorities, conservation authorities, municipalities, academia, schools, hospitals (MASH sector) and not-for-profit organizations in cooperative acquisition ventures for Goods and/or Services when it is in the best interests of the City to do so. Such cooperative procurements shall require the prior written approval of the Manager of Procurement.
- (2) The procurement procedures and policies of the entity initiating the procurement process will be followed.
- (3) The City will issue its own purchase order or contract for their respective Goods and/or Services to the successful vendor or where applicable to the lead participating agency for all cooperative procurements.
- (4) In the absence of an applicable City Contract and with the approval of the Manager of Procurement, the Client Department may purchase Goods and/or Services using established contracts issued by other government bodies, public authorities, conservation authorities, municipalities, academia, schools, hospitals (MASH sector) and not-for-profit organizations. For these contracts, the selection of the vendor must have been made through a competitive procurement process and the resulting contract must permit the City to purchase from that vendor under the same terms and conditions.
- (5) Where the Province of Ontario requires the City to meet a provincial standard for any Goods and/or Services, and has established a prequalified vendor of record list for such Goods and/or Services, the City may invite only those prequalified vendors to participate in the RFQ, RFT or RFP.

## POLICY # 13 - Authority to Execute Contracts

### SECTION 4.13

- (1) The General Manager of the Client Department and the City Manager, shall execute acquisition Contracts and all necessary associated documents on behalf of the City for all RFT and RFP awards approved in accordance with Policy # 2 – Approval Authority. The applicable General Manager shall be the General Manager of Finance & Corporate Services in the case of a corporate-wide Contract.
- (2) Where a Contract is required for a procurement which was not initiated by a RFT or RFP, but was otherwise authorized and approved in accordance with Policy # 2 – Approval Authority, the person having the applicable Approval Authority for the procurement shall also have the authority to execute the Contract and all necessary associated documents on behalf of the City.
- (3) For all other Contracts that received Council approval, the City officials named in the Council resolution shall execute such Contracts on behalf of the City. Where City officials have not been named in the Council resolution, the Mayor and Clerk shall execute such Contract.
- (4) The person(s) who have executed a Contract on behalf of the City in accordance this Policy # 13 shall also have the authority to execute any documents for an assignment or corporate change request related to such Contract.
- (5) All Contracts shall be in a form satisfactory to the City Solicitor and shall contain content which is acceptable to the Client Department.
- (6) All Authorized Delegates will complete the *Notification of Signing Authority Form*, which shall not be effective until approved and executed by the General Manager or City Manager, as the case may be, and forwarded to the City's Finance & Administration and Special Projects Division for reference.

**POLICY # 14 - Standardization**

**SECTION 4.14**

- (1) The Manager of Procurement shall have the authority to negotiate with the original equipment manufacturers and licensed distributors of approved standardized products.
- (2) The Standards and Approved Products Committee shall be responsible to prepare an annual information report to Council outlining the rationale for any Standardization of Goods added to the City's Approved Products Listing, the number of Goods standardized and any standardized Good resulting in a single source purchase.
- (3) Where a standardized Good can be procured from more than one vendor that Good shall not be considered a single source purchase.
- (4) Standardization Approval Summary Table

<b>Standardization Type</b>	<b>Total Cumulative Value (\$)</b>	<b>Duration of the Standard</b>	<b>Approval Required</b>	<b>Expiry</b>
Standardization does not result in a single source purchase.	Less than \$100,000	No more than 5 years	Manager of Procurement or The Standards and Approved Products Committee*	At the conclusion of the contract term.
Standardization does not result in a single source purchase.	Less than \$100,000	Greater than 5 years	Council or The Standards and Approved Products Committee*	As approved by Council or The Standards and Approved Products Committee.
Standardization does not result in a single source purchase.	\$100,000 or greater	Any	Council or The Standards and Approved Products Committee*	As approved by Council or The Standards and Approved Products Committee.
Standard results in a single source purchase.	\$10,000 or greater	Any	Council or The Standards and Approved Products Committee*	As approved by Council or The Standards and Approved Products Committee.

\*Approvals made by The Standards and Approved Products Committee shall only be within the committee's mandate as approved by Council.

## **POLICY # 15 - Participation of Elected City Officials in the Procurement Process**

### **SECTION 4.15**

- (1) Elected City officials may participate in the procurement process in the narrowly defined circumstances described in this Policy #15 for those specific procurement projects identified by Council.
- (2) Elected City officials may participate as members of a steering committee for significant procurement projects identified by Council.

When Council identifies a significant procurement project for which elected City officials are to participate as members of a steering committee, Council will also address the following issues:

- (a) the extent of the elected City officials' involvement in the procurement process to ensure that they are able to provide input prior to the issuance of the procurement documents and to oversee the procurement process, but not function in a decision-making capacity;
  - (b) the selection of elected City officials who are able to comply with Policy # 17 - Conflicts of Interest and who do not otherwise have a perceived or actual conflict of interest that would impair their ability to be impartial; and
  - (c) the number of elected City officials to participate.
- (3) Elected City officials may not participate in the procurement process where they are required to be in an evaluation capacity. Their involvement in the approval capacity of the procurement process is limited to what is stipulated in Policy # 2 - Approval Authority.

## POLICY # 16 - Disposal of Surplus and Obsolete Goods

### SECTION 4.16

- (1) A Director of the Client Department shall:
  - (a) declare a good as surplus or obsolete to the needs of the City before the good may be disposed of in accordance with this Policy # 16; and
  - (b) recommend the appropriate disposal methods, which are cost effective and in the best interest of the City, for the declared surplus or obsolete good.
  
- (2) The Manager of Procurement, in conjunction with the City's Director of Financial Services & Corporate Controller, shall have the authority to sell, exchange, or otherwise dispose of goods declared as surplus or obsolete to the needs of the City by any of the following disposal methods:
  - (a) by sale to other City departments; or
  - (b) by sale to public or private sector entities; or
  - (c) by external advertisement, formal request, auction or public sale (where it is deemed appropriate, a reserve price may be established); or
  - (d) by donation to a non-profit agency; or
  - (e) by recycling; or
  - (f) in the event that all efforts to dispose of the goods by sale are unsuccessful, by scrapping or destroying if recycling is unavailable.
  
- (3) No disposition of such good(s) shall be made to employees of the City, members of Council, or their family members unless such good(s) are sold through external advertisement, formal request, auction or public sale and no conflict of interest exists. Prior to any such disposition, the employee shall declare their interest in writing to their General Manager, who will confirm whether any conflict of interest exists. In the case of an elected official, the elected official shall declare their interest in writing to the City Manager. Family members include those defined by the City's Code of Conduct for Employees Policy, Code of Conduct for Members of Council or such other similar policy currently in force.
  
- (4) The Manager of Procurement shall submit an annual report to the General Manager of Finance and Corporate Services summarizing the disposal of all surplus and obsolete goods pursuant to this Policy # 16.
  
- (5) The value of any declared surplus or obsolete good cannot be used to offset the value of procurement when determining the procurement process. For example, any trade-in value or salvage value recoverable from a project cannot be used to offset, reduce or change the value of the procurement for purposes of determining the appropriate procurement process to be followed under the Procurement Policy.
  
- (6) The disposal of artifacts is exempt from the requirements of the Procurement Policy.

## POLICY # 17 - Conflicts of Interest

### SECTION 4.17

- (1) Employees of the City shall not have a pecuniary interest, either directly or indirectly, in any City Contract or with any person acting for the City in any Contract for the supply of Goods and/or Services for which the City pays or is liable, directly or indirectly to pay unless such interest has been declared pursuant to the Code of Conduct for Employees Policy, as amended or replaced from time to time, and the employee otherwise complies with such policy.
- (2) In addition to complying with the Code of Conduct for Employees Policy as set out under subsection 4.17(1), employees of the City are required to declare any pecuniary interest, either direct or indirect, in writing to their General Manager with a copy to the Manager of Procurement indicating the specific nature of the conflict.
- (3) Members of Council are required to declare any pecuniary interest direct or indirect, and its general nature, which may result in a conflict of interest pursuant to the *Municipal Conflict of Interest Act* and the member of Council shall otherwise comply with that Act.
- (4) Any Contract with the City may be voided in which a member of Council or any employee of the City has an undeclared direct or indirect pecuniary interest.
- (5) All City employees and others participating in the development of the Specifications and/or evaluation for any Request for Tenders, Request for Prequalifications and Request for Proposals will be required to complete and sign a *Conflict of Interest Form*.



## POLICY # 18 - Vendor Complaint Resolution

### SECTION 4.18

- (1) The City of Hamilton encourages the most open, competitive procurement processes and the objective and equitable treatment of all vendors.
- (2) Vendors may feel aggrieved and may seek to dispute the recommendation of an award of a Contract. To maintain the integrity of the process, vendors who believe they have been treated unfairly may take the following steps, prior to the award of the Contract:
  - (a) Request a meeting with the Manager of Procurement within five business days after the earlier of the following dates set out below has occurred:
    - (i) the date the vendor is notified that its Bid is non-compliant; and
    - (ii) the date the vendor is notified of the results of the evaluation of all Bids.

The vendor's request shall be in writing and shall provide a detailed statement of the grounds of the complaint, including copies of relevant documents, and identify the form of relief requested; and
  - (b) If no resolution satisfactory to both parties has been achieved, the vendor will have three business days from the date of the meeting with the Manager of Procurement to make a formal written request to meet with the General Managers of the Client Department and of Finance and Corporate Services regarding the vendor's complaint. The General Managers will make the final decision regarding the vendor's complaint, which decision may be made orally or in writing. If the General Managers' decision means that the City can proceed with the award of the Contract, then the award may occur at any time after such decision is made.
- (3) The scheduling of any meeting with the Manager of Procurement or applicable General Managers shall take place within three business days of the Manager of Procurement's receipt of the vendor's written request to meet so as not to delay the award of a contract. The Manager of Procurement shall provide the vendor with proposed dates and times for the meeting. The vendor shall be required to respond with their availability and attend a meeting at one of the proposed day and times otherwise have their complaint denied.
- (4) The request for any meeting with the applicable General Managers may be denied. For instance, where the applicable General Managers have determined that it would be inappropriate or where there is no merit to the complaint.
- (5) Where a vendor has been banned from competing for or being awarded any City Contract for a period of one year in accordance with subsection 4.1(7) of Policy # 1 - Policy for Vendor Eligibility;
  - (a) the vendor may challenge the one year ban only to the appropriate standing committee of Council where there are extenuating circumstances respecting why the initialing was not done within one business day of the City's request; and
  - (b) the appropriate standing committee will provide to Council a recommendation with respect to the vendor's complaint.

## POLICY # 19 – Non-compliance with the Procurement Policy

### SECTION 4.19

- (1) Subject to Policy # 2 - Approval Authority, the General Manager of the Client Department in consultation with the Manager of Procurement will authorize the use of a *Non-Compliance with the Procurement Policy Form* which outlines the circumstances behind the non-compliance issue. This process is to be used when there is a violation of the Procurement Policy consisting of one or more of the following:
  - (a) the contracting of a vendor to provide Goods and/or Services, not in accordance with the requirements of the Procurement Policy;
  - (b) the receipt of an invoice by the City from a vendor, for Goods and/or Services previously acquired outside the procurement process required under the Procurement Policy;
  - (c) where it can be proven that the actions or non-actions of an employee, or employee group results in the requirement to initiate a procurement process pursuant to Policy # 10 – Emergency Procurements or Policy # 11 – Non-competitive Procurements;
  - (d) splitting of purchases contrary to the Procurement Policy requirements;
  - (e) any and all other violations of the Procurement Policy.
- (2) Notwithstanding subsection (1) of this Policy # 19, an employee who fails to act in accordance with the provisions of the Procurement Policy, will be subject to appropriate disciplinary action up to and including termination of employment.

The General Manager of the Client Department will review such violations (through the *Non-Compliance with the Procurement Policy Form*) and shall consult with the Director of Employee & Labour Relations for consideration of any disciplinary action to be taken as appropriate.

- (3) The Director of Financial Services & Corporate Controller will be responsible for reporting the use of all *Procurement Policy Non-Compliance Forms* to Council on a quarterly basis.

**POLICY # 20 – Review of the Procurement Policy**

**SECTION 4.20**

- (1) The Manager of Procurement shall submit to the Procurement Sub-Committee and to the appropriate standing committee of Council a biennial report recommending any changes to the Procurement Policy to meet the needs and requirements of the City to operate in an efficient and cost effective manner and in accordance with all applicable laws.
- (2) All changes to the Procurement Policy require the approval of Council.
- (3) Changes to Procurement Procedures and Guidelines require the approval of the City's Director of Financial Services & Corporate Controller.
- (4) On a periodic basis the City's Internal Auditor will review the Procurement Policy to assess its effectiveness.

## POLICY # 21 – Anti-Sweatshop Procurement

### SECTION 4.21

- (1) The City of Hamilton does not encourage the use of consumer goods or products manufactured, assembled or produced in factories where persons and, in particular, children are used as slave or forced labour or in other exploitive manners which restricts the person's freedom or impedes the child's development. The City will consider the supply of consumer goods or products manufactured under such exploitive manners as a negative practice of the vendor.
- (2) The City will not knowingly accept consumer goods or products manufactured, assembled or produced in a Sweatshop or under Sweatshop Conditions.
- (3) The determination of compliance with this Policy # 21 shall be in the absolute discretion of the Manager of Procurement. The Manager of Procurement may, but is not obligated to, request further information and documentation from the vendor to confirm compliance; and may base his or her determination on information provided by Canadian or international certification or compliance agencies or groups, workers or labour unions or organizations, manufacturers, consumer groups, international organizations, ILO or United Nations sources and other parties.
- (4) If any consumer goods or products supplied under a RFQ/RFP/RFT are determined by the Manager of Procurement to be manufactured, assembled or produced in contravention to this Policy # 21 and/or the certificate required hereunder, the City reserves the right, at its absolute discretion, to:
  - (a) return all the goods to the vendor and require the vendor to replace, within 30 days from the date of notification by the City, the non-compliant goods or products with goods or products, of at least equal value, complying with this Policy # 21 and all other requirements and specifications of the RFQ/RFP/RFT, all at no cost to the City; or
  - (b) require the vendor, within 30 days from the date of notification by the City, to provide the City with conclusive evidence that the consumer goods or products have not been manufactured, assembled or produced in contravention of this Policy # 21, failing which the City may terminate the Contract without any compensation and without notice to the vendor.
- (5) If the City terminates a Contract with a vendor as a result of a breach of this Policy # 21, the City shall cease to be liable to the vendor or to any other person for any unpaid amounts that would otherwise have been payable under the terms of the Contract and shall not be under any obligation to return to the vendor any product supplied by the vendor under the Contract.
- (6) Child Labour Produced Goods Unacceptable

The City fully subscribes to the United Nations Convention on the Rights of the Child and, in particular, Article 32 of the Convention that requires that a Child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the Child's health or physical, mental, spiritual, moral or social development. The City reserves the right to terminate any Contract unconditionally and without liability or compensation whatsoever to the City in the event

that consumer goods received from a vendor are discovered to have been manufactured, produced or assembled in a Sweatshop or in non-compliance with the national labour laws and regulations with respect to child employment and/or non-compliance with the United Nations Convention on the Rights of the Child.

- (7) A vendor shall certify the following on *the Form of Quotation/Form of Proposal/Form of Tender* to be included in an RFQ/RFP/RFT, as the case may be:

"We hereby represent and certify the foregoing:

- (a) all goods or products supplied under this RFQ/RFT/RFP have not been manufactured, assembled or produced, either wholly or in part, in a Sweatshop, as defined in the City of Hamilton's Procurement Policy or by child labour;
- (b) that any goods or products found to be supplied in contravention of the City's Anti-Sweatshop Policy will be returned to us, at our cost and at no cost whatsoever to the City, and that the City has the option to have the goods or products replaced by us with product of at least equal value, meeting specifications of the RFQ/RFT/RFP, or the City may terminate the Contract without any compensation whatsoever to us.

We hereby acknowledge that the City has been induced to consider this RFQ/RFT/RFP on the basis of this representation and certification.

We further acknowledge that the City shall have the right to reject our Quotation, Bid, or Proposal, terminate any Contract made, and collect any of its losses or damages arising out of our breach of the City of Hamilton's Procurement Policy."

## POLICY # 22 – In-House Bid Submissions

### SECTION 4.22

- (1) In-house Bid submissions will be considered when contemplating a transfer of services from internal services to external services or vice versa.
- (2) The General Manager of the Client Department submitting an in-house Bid shall obtain Council approval prior to submitting such a Bid. The Client Department's report to Council seeking such approval shall include as a minimum:
  - (a) the members of the in-house Bid submission team;
  - (a) which costs will be included in the Bid and how costs will be determined; and
  - (b) the rationale for submitting an in-house Bid.
- (3) The RFP or RFT documents to be utilized, as applicable, shall clearly indicate:
  - (a) an in-house Bid is being considered for the RFP/RFT; and
  - (b) any advantages that the in-house Bid will have over other bidders by virtue of it being an in-house Bid.
- (4) The integrity of the evaluation process will be maintained when evaluating an in-house Bid as follows:
  - (a) no member of the in-house Bid submission team nor any employee whose employment is affected by the transfer of services shall have any communications with a member of the evaluation team or an elected official concerning the subject RFP or RFT, as the case may be, except in accordance with the communication and any interview provisions contained in the applicable RFP/RFT;
  - (b) no member of the evaluation team or an elected official shall have any communications with a member of the in-house Bid submission team nor any employee whose employment is affected by the transfer of services, except in accordance with the communication and any interview provisions contained in the applicable RFP/RFT;
  - (c) no member of the in-house Bid submission team nor any employee whose employment is affected by the transfer of services shall participate in the development of the subject RFP/RFT nor shall such persons have any communications with any person participating in the development of the subject RFP/RFT;
  - (d) the same rules shall govern the submission of the in-house Bid as will apply to any other bidder, unless expressly provided otherwise in the RFP/RFT document; and
  - (e) the evaluation of Bids shall be objective and the process shall avoid any unfair bias towards either the in-house or external Bids.

## **SCHEDULE A – Statement of Ethics for Public Procurement**

The following ethical principles should govern the conduct of every City employee delegated with the authority to procure.

- Believes in the dignity and worth of the service rendered by the organization, and the societal responsibilities assumed as a trusted public servant.
- Is governed by the highest ideals on honour and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served.
- Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.
- Keeps the governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.

### **Responsibility to the City:**

- Follow the lawful instructions or laws of the employer.
- Understand the authority granted by the employer.
- Avoid activities which would compromise or give the perception of compromising the best interest of the employer.
- Reduce the potential for any chances of preferential treatment by actively promoting the concept of competition.
- Obtain the maximum benefit for funds spent as agents for the City.

### **Relationship with vendors:**

- Maintain and practice, to the highest degree possible, business ethics, professional courtesy and competence in all transactions.
- Purchase without prejudice, striving to obtain the maximum value for each dollar of expenditure.
- Preclude from showing favouritism or be influenced by vendors through the acceptance of gifts, gratuities, loans or favours.
- Adhere to and protect the suppliers business and legal rights to confidentiality for trade secrets, and other proprietary information.

### **Relationship with the City:**

- Remain free of any and all interests and activities, which are or could be detrimental or in conflict with the best interests of the employer.
- Refrain from engaging in activities where a City employee has a significant personal or indirect financial interest.
- Exercise discretionary authority on behalf of the employer.
- Avoid acquiring interest or incurring obligations that could conflict with the interests of the City.

## SCHEDULE B – Exemptions

Items listed below are exempt from the requirements of the Procurement Policy, save and except for Policy # 2 - Approval Authority.

### (1) Employer's General Expenses

- (a) Insurance premiums.
- (b) Debt payments.
- (c) Purchase of investments. *This exemption does not include any ancillary services.*
- (d) Grants, loans and levies.
- (e) Licenses (for example, vehicle, elevators, radios).
- (f) Real property payments including land, buildings, leasehold interests, easements, encroachments and licenses, or the like.
- (g) Insurance claims, legal settlements and grievance settlements. *This exemption does not apply to the procurement for Goods to be replaced.*
- (h) Adjusting services for the investigation of liability and property claims.
- (i) Binding orders, judgments or decisions of an arbitrator, tribunal or court. *Given that these payments are mandatory, approval from the General Manager of the Client Department which is funding the payment is required instead of the approvals set out in Policy # 2 –Approval Authority.*
- (j) Refundable travel expenses.
- (k) Temporary staffing agencies and services.
- (l) *Assessments and tools where positions and/or individuals are assessed for recruitment and selection purposes, including tools and assessments which would assist in the accommodation of individuals.*
- (m) *Payments required by Council approved compassionate programs.*
- (n) *Other City and employee related expenses, such as: memberships in professional organizations (professional dues), staff attendance at seminars, testing or examination fees, workshops, courses, training, trade shows or conferences. This shall not include any training specifically designed for the City.*

### (2) Professional Services

- (a) Medical Professional Services.
- (b) Experts retained for the purposes of, or in contemplation of, litigation.
- (c) Confidential Items (for example Forensic Audits).
- (d) Outside Legal Counsel where retained by the City Solicitor or the Director of Employee & Labour Relations. *An annual report shall be issued to Council by the City Solicitor and by the Director of Employee & Labour Relations detailing outside legal counsel pursuant to (2)(d).*
- (e) Mediators and Arbitrators.



**(3) Special Services**

- (a) Providers of community services (including counselling, individual assessments, training, community support services, licensed child care centres, early years centres, transportation of children identified with special needs or having a therapeutic need to attend a licensed child care centre, Domiciliary Hostels Program, Long Term Care Facilities nursing, homemakers, funeral services, planned parenthood and prenatal care and education, as part of City-approved programs and projects).
- (b) Accommodations provided as part of City-approved programs and projects for the homeless and others living in poverty.
- (c) Vouchers provided by Community Services and Public Health Services as part of City-approved programs and projects.
- (d) Financial reviews conducted on a contingency basis for the purposes of recovering amounts paid and/or owed, such as tax recovery services.
- (e) Public/guest speakers, individuals or ensembles that offer creative content for presentation to others.

**(4) Utility Billing**

- (a) Electricity.
- (b) Postal services, postage.
- (c) Water and Wastewater.
- (d) Natural gas.
- (e) Communications, for example: voice and data network communications.
- (f) The removal, relocation, identification or engineering related to utility infrastructure that exists on road allowances, right of ways and other City properties. This includes sub-surface and above-surface infrastructure.
- (g) Railway companies related to removal, relocation, construction supervision (flagging) and maintenance.
- (h) The purchase, sale, delivery and storage of Energy Commodities and the consideration of price hedging for Energy Commodities shall be in accordance with the City's Energy Commodity Policy as amended, repealed or replaced from time to time.

**(5) Government agencies, regulatory bodies, licensing agencies, other public authorities and non-for-profit organizations accountable to the Ontario government and municipalities to which the City is required to remit to or pay a fee.**

**(6) Other**

- (a) Antiques and artifacts (shops, sales, repairs, but not including restoration).
- (b) Acquisition of art.
- (c) Publications (including newspapers, periodicals, magazines or books), CDs, DVDs and all copyrighted material.
- (d) Maintenance fees for software and computer hardware for information systems previously acquired. This exemption does not apply to new modules nor to new or additional licenses.
- (e) Goods for the purpose of retail sales (re-sale) by the City (not including items that bear the City of Hamilton logo or insignia). This exemption does not include food and beverage items.

- (f) Media advertising, including trade shows.
- (g) Commodity purchases using a commodity price hedging agreement in accordance with the City's Commodity Price Hedging Policy.
- (h) Venues (including food and beverage where off site catering is not permitted) for banquets, meetings, events, receptions and training.
- (i) Hosting, sponsorship and/or rights fees for conventions or sports events incurred by Tourism Hamilton Inc.
- (j) Admission to tourism attractions and destinations for recreational day camps for children and youth.
- (k) All real property transactions except:
  - (i) Revenue generating leases; or
  - (ii) Where a procurement process is to be engaged (i.e.RFP, RFI, etc.) including when Council approval has been obtained, the Procurement Section shall be consulted prior to that process being issued.
- (l) Alcoholic beverage purchases by the golf courses.

**(7) Sponsorships**

Sponsorships solicited by the City shall be in accordance with the City's Policy for Commercial Advertising and Sponsorship as amended, repealed or replaced from time to time.