



**CITY OF HAMILTON**  
**CORPORATE SERVICES**  
**Financial Services and Taxation**

<b>TO:</b>	Chair and Members Procurement Sub-Committee
<b>COMMITTEE DATE:</b>	August 27, 2020
<b>SUBJECT/REPORT NO:</b>	2020 Proposed Procurement Policy Review and Proposed Amendments (FCS20022) (City Wide) – Outstanding Business Items
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Tina Iacoe (905) 546-2424 Ext. 2796
<b>SUBMITTED BY:</b>	Mike Zegarac General Manager, Finance and Corporate Services Corporate Services Department
<b>SIGNATURE:</b>	

## **RECOMMENDATIONS**

- (a) That the City of Hamilton Procurement Policy, attached as Appendix “A” to Report FCS20022, be approved;
- (b) That the item respecting recommendations and options for Councillors to comply with Policy 19 of the Procurement By-law be considered complete and removed from the Audit, Finance & Administration Committee’s Outstanding Business List.
- (c) That a By-Law to adopt and maintain a Procurement Policy for the City of Hamilton, in substantially the form set out in Appendix “A” to Report FCS20022, be enacted.

## **EXECUTIVE SUMMARY**

In accordance with Procurement Policy # 20 – Review of the Procurement Policy, the Manager of Procurement is required to submit a biennial report recommending changes to the Procurement Policy (Policy). The most recent Report amending the Procurement Policy was Report FCS17003, approved by Council on April 12, 2017.

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OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

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

**SUBJECT: 2020 Proposed Procurement Policy Review and Proposed Amendments FCS20022 (City Wide) - Page 2 of 10**

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This review of the Policy was a co-ordinated effort with the Procurement Advisory Committee (PAC), a staff steering committee which was created when the operational review of the procurement process was undertaken by the City of Hamilton in 2010. Through PAC, comments and recommended revisions were further solicited from all City of Hamilton (City) internal client departments. The particulars of the review are set out in the Analysis and Rationale for Recommendation section of this report.

This report will also update Council on the actions taken by staff to address outstanding items. As a result of this report, items representing 2020 Proposed Procurement Policy Review and Proposed Amendments will be considered complete and removed from the Audit, Finance and Administration Committee and General Issues Committee outstanding business lists.

***Alternatives for Consideration – none***

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: None

Staffing: None

Legal: Legal Services will prepare a By-law in tandem with this report for execution by the Mayor and Clerk.

**HISTORICAL BACKGROUND**

As per Procurement Policy # 20 – Review of the Procurement Policy, the Manager of Procurement is required to submit a biennial report to the Procurement Sub-Committee recommending changes to the Procurement Policy (Policy). This report is the result of that review.

In addition to the Procurement Policy review, there are currently two Outstanding Business Items (OBI) that were directed to Procurement staff to report back on, those being:

- 1) Audit, Finance & Administration Committee: January 18/17 General Issues Committee Meeting (January 25/17 Council)  
Review of Procurement Policies as it relates to Hiring Local Trades

“That staff be directed to meet with representatives of the Hamilton-Brantford Building and Construction Trades Council and other stakeholders, to discuss:

- a. the City’s current procurement Policy;
- b. to review the procurement policies of other municipalities that now include provisions regarding hiring local trades; and,

- c. to re-examine Report FCS09109(c) - Evaluation of the City of Hamilton Purchasing Program Update, which was approved by Council on December 11, 2011 (as Item 6 of the Audit, Finance & Administration Committee Report 11-014), to determine if the Program requires updating and report back to the Audit, Finance & Administration Committee.”

This item is the result of delegations that were received at the General Issues Committee of January 18, 2017 regarding the Trans Pacific Partnership Agreement (TPP). Delegates expressed concerns over the TPP, in particular:

- the need for good trade, local business and local employment,
- concerns that the TPP would “eliminate local employment and allow foreign governments to subsidize competing business interests against unsubsidized local business interests”;
- concerns that a “competing business model is allowed to operate outside the legally accepted standards and regulation of that industry and its best practices”
- concerns that “companies are allowed to bring their entire labour force, allowing them to work under their own conditions and standards on local projects.”

In 2017, Procurement staff met with the delegate from the Hamilton Brantford Building Trades (Trade Council) to discuss the TPP and their concerns. The discussion during the meeting involved many social procurement aspects such as how to encourage women in the workforce, new immigrants to Canada and young disadvantaged youth to work in the labour trades.

In anticipation of reporting back to Committee and Council on this OBI, Procurement staff recently reached back out to the Trades Council to determine if the most recent changes in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), formerly the TPP, relieved the Trades Council’s concerns. Unfortunately, the Trades Council has responded with the same, if not additional concerns and therefore staff are not able to fully address this OBI in time for this report. Procurement staff will report back to Committee and Council by first Quarter of 2021.

- 2) Audit, Finance & Administration Committee: July 14, 2017 Council 2017 Q1 Emergency and Non-Competitive Procurements Report (FCS17011)

“That staff report back to the Audit, Finance and Administration Committee with recommendations and options in order for Councillors to comply with Policy 19 of the Procurement By-law (17-064).”

This item is the result of discussions at the Audit, Finance & Administration Committee (AF&A) meeting of July 14, 2017 and subsequently Council’s meeting of July 16, 2017, all regarding the 2017 First Quarter Non-Compliance with the Procurement Policy

**SUBJECT: 2020 Proposed Procurement Policy Review and Proposed Amendments FCS20022 (City Wide) - Page 4 of 10**

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Report (FCS17012) (City Wide) (Item 5.8). Committee and Council discussed in length the procurement process and requested staff to draft optional policies to allow Members of Council flexibility to procure goods and services and remain in compliance with the Procurement Policy.

**POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

If the recommendations contained in this report are approved, the current Procurement Policy By-law No. 17-064 would be repealed and replaced by a new Procurement Policy By-law and amended Procurement Policy.

**RELEVANT CONSULTATION**

The Procurement Advisory Committee (PAC) which is a steering committee of various staff representatives from City departments, participated in the review of the Policy. Through PAC, comments and recommended changes to the Policy were solicited from all City internal client departments. Consultation was also carried out between Procurement and Legal Services Division staff in the drafting of the Policy amendments.

**ANALYSIS AND RATIONALE FOR RECOMMENDATION**

**PROCUREMENT POLICY AMENDMENTS**

In addition to the changes identified below, the proposed Policy amendments include nominal housekeeping issues throughout which have not been specifically addressed in this report. These amendments include editing for better clarity and understanding.

The following list outlines the more significant proposed changes made to the Procurement Policy:

**Section 2: Responsibilities & Prohibitions of Procuring Goods and/or Services**

Section 2 sets out the responsibilities and prohibitions for both elected officials and staff under the Policy. Proposed wording has been added to reflect that any procurement by the City is subject to the provision of Trade Agreements.

**Section 3: Definitions and Interpretations**

Section 3, Definition and Interpretations sets out the definition of words as well as other references used throughout the Procurement Policy. There are six proposed changes in this section for clarity purposes in the Policy and include:

**SUBJECT: 2020 Proposed Procurement Policy Review and Proposed Amendments FCS20022 (City Wide) - Page 5 of 10**

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- a) The addition of the statement “that all dollar values referred to in the Procurement Policy stated shall be in Canadian funds.”;
- b) The addition of the definition of “In-House Bid”; and
- c) An expansion of the description for a “Request for Information”;
- d) The addition of the definition of “Litigation”;
- e) The addition of the definition of “Request for Roster Quotations”; and
- f) The addition of the definition of “Trade Agreements” that apply to municipal procurement.

**Section 4.5.1, Policy #5.1 – Low Dollar Value Procurements (up to but not including \$10,000)**

Policy #5.1 sets out the requirements for the procurement of Goods and Services under \$10,000. The threshold for Low Dollar Value Procurements to proposed to be changed from “up to but not including \$10,000” to “up to but not including \$25,000”. This proposed change was brought forward by several PAC members. Increasing the threshold will allow Members of Council and City staff to procure Goods and/or Services more easily and with more flexibility. The last change to this Policy was in 2012 when the upper threshold was increased from \$5,000 to \$10,000.

In performing its due diligence, Procurement staff benchmarked with 52 other publicly funded agencies and Municipalities throughout Ontario with respect to their low dollar value procurement thresholds. Of the 52 agencies, the following 11 have \$25,000 or higher as their upset limit for similar procurements: City of Brampton, City of Cambridge, City of Kitchener, Region of Peel, Region of Waterloo, Town of Milton, Waterloo Regional Police Service, York Regional Police, City of Guelph, Canadian Partnership Against Cancer and City of Toronto.

**Section 4.5.2, Policy #5.2 - Request for Quotations (\$10,000 – up to but not including \$100,000)**

Policy #5.2 sets out the requirements for the procurement of Goods and Services utilizing a Request for Quotations (RFQ). There are two proposed changes to this Policy:

- a) The threshold for RFQs be amended from \$10,000 up to but not including \$100,000 to “\$25,000 up to but not including \$100,000”. Increasing the lower threshold for RFQs is consistent with the proposed change to Policy 5.1. The last change to this Policy was in 2013 when the upper threshold was increased from \$50,000 to \$100,000.

Procurement staff are proposing to not increase the upper threshold for Policy 5.2 in order to remain in compliance with the Canadian Free Trade Agreement

**SUBJECT: 2020 Proposed Procurement Policy Review and Proposed Amendments FCS20022 (City Wide) - Page 6 of 10**

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(CFTA) and the current thresholds set out in that Act (\$105,700 for goods and services).

- b) Wording has been added to Policy 5.2 to require staff issuing a Request for Quotations to use the templated document provided by the Procurement Section. Utilizing the templated document ensures transparency to the process by advising all bidders of the same terms and conditions of the procurement process. It also ensures that every contract that is awarded includes all of the standard terms and conditions for a procurement, including insurance, indemnity, vendor performance, etc.

Section 4.5.4: Policy #5.4 - Request for Proposals (\$10,000 and greater)

Policy #5.4 sets out the requirements for the procurement of Goods and Services utilizing a Request for Proposals (RFP). Proposed wording has been added to Policy 5.4 to allow for the award of an RFP to multiple vendors or a roster of vendors. The current Policy only contemplates an award to “a” or “one” vendor rather than more than one vendor. The award shall be made consistent with the evaluation methodology stated above and the number of vendors to be awarded or the way they shall be selected shall be clearly set out in the RFP.

Section 4.9: Policy # 9 - Consulting and Professional Services

Policy #9 Consulting and Professional Services sets out the requirements for the City’s Professional and Consultant Roster (Roster). There are two proposed changes to the Policy:

- a) The term of the Roster be amended from two years to three years. The proposed three-year term would reduce staff’s costs associated with the preparing and awarding a Roster.

The entire procurement process for new Roster takes approximately 12 months, beginning in January when staff begin to refine their terms of reference for the new document, until December when Procurement staff make the award of the procurement process. This time frame essentially leaves only one of two years in which staff are not spending time and resources on the Roster’s procurement process.

- b) Proposed wording has been added to Policy 9 to fully implement Request for Roster Quotations (RFRQ), for Roster Assignments with an estimated procurement cost between \$150,000 and \$249,999.

RFRQs were initially approved by Council on March 9, 2016 in Report FCS16020/PED16053/PW16009 as a trial period to extend the use of the Roster as a pre-qualification mechanism for Roster Assignments with an estimated procurement cost between \$150,000 and \$249,999 for the 2017-2018 Roster term. The trial was further approved by Council on May 23, 2018 in Report PW18036/PED18121/FCS18056 for the duration of the 2019-2020 roster period.

Since its implementation in 2017, there have been six RFRQs issued and awarded with an aggregate award amount of \$1,621,854. Using the RFRQ process has saved on internal staff resources both in the Procurement Section (in time and resources taken to issue and administer the RFP document and process) and in the client department (time and resources to evaluate proposals received).

By including the RFRQ process within the Policy and subsequently as a component in the next issuance of the Roster procurement document, staff is expecting the level of competition from the consultancy industry to increase as firms will be more interested in participating on the Roster with the potential for larger dollar value assignments. The increase in competition is also expected to bring more aggressive hourly rates amongst consultants.

#### Section 4.10: Policy #10 – Emergency Procurements

Policy #10 Emergency Procurements sets out the requirements for the procurement of Goods and Services in the event of an emergency situation, as defined in the Policy. Proposed wording has been added to Policy 9 in order to provide clarity if the Emergency Operations Centre (EOC) has been activated or when an Emergency situation has been declared, that the City's EOC Plan shall supersede the Procurement Policy.

#### Section 4.11: Policy #11 – Non-Competitive Procurements

Policy #11 Non-Competitive Procurements sets out the requirements for sole and single source procurement of Goods and Services. Proposed wording has been added to Policy 11 requiring Council approval for any contract extension longer than 18 months. The current Policy does not have any limitation in terms of cost or time for a contract extension.

#### Section 4.14: Policy #14 – Standardization

Policy #14 Standardization sets out the requirements for standardizing Goods and Services. Proposed wording has been added to the Policy and applies to standardizations that have been approved by Council or the Manager of Procurement

and where the approval does not indicate a time frame or expiry for the standardization. The additional wording in the Policy imposes an automatic three-year duration for the standardization in these circumstances.

Section 4.18: Policy #18 – Vendor Complaint Resolution

Policy #18 Vendor Complaint Resolution sets out the requirements for vendors seeking to dispute the recommendation of an award of a Contract. The proposed wording amends the number of business days a vendor has in order to raise a dispute from 5 business days to 10 business days. This change is consistent with both the Canadian Free Trade Agreement (CFTA) and the Comprehensive European Trade Agreement (CETA).

Section 4.22: Policy #22 – In-House Bid Submissions

Policy #22 In House Bid Submissions sets out the requirements for in-house bids to be used when contemplating a transfer of services from internal services to external services or vice versa. The proposed wording incorporates the use of the definition “In-House Bid” and includes the potential use of an In-House Bid in a Request for Pre-Qualification (RFPQ) process.

Schedule B – Exemptions

The proposed amendments to Schedule B – Exemptions include minor additions to the Schedule and provide clarity with respect to current exemptions already included in the Schedule.

**Outstanding Business Items**

2017 Q1 Emergency and Non- Competitive Procurements Report (FCS17011)

In order to suffice this item, staff are proposing the following options to allow Members of Council flexibility to procure goods and services and remain in compliance with the Procurement Policy.

Option 1

Proposed wording added to Section 4.5.1, Policy #5.1 – Low Dollar Value Procurements to allow Councillors to procure any good or service from any vendor, whether a corporate contract exists or not, up the low dollar threshold for Policy #5.1 (currently \$10,000 and potentially \$25,000 should the recommendations be approved in this Report) annually.



**SUBJECT: 2020 Proposed Procurement Policy Review and Proposed Amendments FCS20022 (City Wide) - Page 9 of 10**

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“Notwithstanding subsection (1) of this Policy # 5.1, any Member of Council may procure a Good and/or Service from any vendor in an amount not to exceed the upset threshold set out in Policy #5.1.”

This option may require staff to track the amount of spending per vendor, per good or service to ensure the annual threshold is not exceeded. However, since the dollar threshold is quite high, this will need to be monitored infrequently through the year.

Option 2

Proposed wording added to Section 4.5.1, Policy #5.1 – Low Dollar Value Procurements to allow Councillors to procure any good or service from any vendor, whether a corporate contract exists or not, up to an aggregate annual amount of \$5,000, \$1000, \$500 or \$250.

- 2a) “Notwithstanding subsection (1) of this Policy # 5.1, any Member of Council may procure a Good and/or Service from any vendor up to \$5,000 annually.”
- 2b) “Notwithstanding subsection (1) of this Policy # 5.1, any Member of Council may procure a Good and/or Service from any vendor up to \$1,000 annually.”
- 2c) “Notwithstanding subsection (1) of this Policy # 5.1, any Member of Council may procure a Good and/or Service from any vendor up to \$500 annually.”
- 2d) “Notwithstanding subsection (1) of this Policy # 5.1, any Member of Council may procure a Good and/or Service from any vendor up to \$250 annually.”

The dollar values set out in this option were openly discussed in Council’s meeting of July 14, 2017. Any one of these options would require staff to track the amount of spending per vendor on a regular or at least a monthly basis to ensure these thresholds are not exceeded.

Procurement’s Recommendation

Currently Members of Council and staff alike are required to comply with the Procurement Policy in all respects. Having exemptions in the Policy that apply to only Councillors would be inconsistent to the intent of the Policy.

Prior to considering what options Procurement staff could best present, the Manager of Procurement reached out to each member of the current AF& A Committee as well as Councillor Jackson (who seconded the motion at Council) to request to meet to discuss the OBI. Councillors who met and spoke with the Manager of Procurement were

**SUBJECT: 2020 Proposed Procurement Policy Review and Proposed Amendments FCS20022 (City Wide) - Page 10 of 10**

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provided with a high-level description of the background for this motion, if they had any operational requirements that Procurement could help them address in order to be compliant with the Procurement Policy. All the Councillors who were consulted recognized the need for transparency in reporting Policy 19s and most indicated that they respected the Policy as is, without any further waiver or need for flexibility.

Therefore, considering the consultation with some Members of Council, it is the Manager of Procurement's recommendation that none of the options listed in this Report be adopted and that the Policy not be changed.

**ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

**Community Engagement & Participation**

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

**Our People and Performance**

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

**APPENDICES AND SCHEDULES ATTACHED**

Appendix "A" to Report FCS20022 - City of Hamilton Procurement Policy By-law and Procurement Policy.

TI/dw