



Staff Report

Finance and IT Services

Report To: Committee of the Whole
Meeting Date: June 25, 2018
Report Number: FAF.18.108
Subject: Updates to POL.COR.07.05 Purchasing of Goods and Services Policy
Prepared by: Serena Wilgress, Manager of Purchasing and Risk Management

A. Recommendations

THAT Council receive Staff Report FAF.18.108 entitled "Updates to POL.COR.07.05 Purchasing of Goods and Services Policy"; and

THAT Council approve the updated Purchasing of Goods and Services Policy as attached.

B. Overview

Minor revisions are required to bring the Town's Purchasing Policy into compliance with the Canadian Free Trade Agreement and the Comprehensive Economic Trade Agreement.

C. Background

In November 2016, Council approved a new purchasing policy for use by Town Staff. Since its implementation, the Canadian Free Trade Agreement (CFTA) and the Comprehensive Economic Trade Agreement (CETA) have been ratified.

D. Analysis

The current practices of the Town ensure compliance with all trade agreements, however, CETA requires that bids over certain amounts be advertised in accordance with strict minimum time periods. The advertising time periods can be reduced if the following processes are followed:

- Minimum 40 days
- Reduce by 5 days if the notice of procurement is published electronically
- Reduce by 5 days if all tender documentation is made available electronically
- Reduce by 5 days if submissions are accepted electronically

At this time, the Town is publishing notices electronically and making the tender documents available electronically. It is the intention of staff to proceed to receiving electronic submissions in the 4th quarter of 2018.

The current thresholds for CETA are as follows:

| Type of Procurement | Threshold (published by the Treasury Board Secretariat, effective January 1, 2018) |
|---------------------|--|
| Goods | \$365,700 |
| Services | \$365,700 |
| Construction | \$9,100,000 |

The thresholds are evolving and will be published annually.

In addition to the above, minor grammatical changes are required to the Policy as outlined below:

1. Core Leadership Team will be revised to Senior Management Team
2. Clause 11 – Cooperative Purchasing, add:
Notice of Participation in cooperative purchases will be posted annually to the Town’s website in accordance with the requirements of CETA and CFTA.
3. Clause 21 – Council Approval Required, revise as follows:
21.4 Any contract where the award is not being recommended to the lowest **compliant** bidder, with the exception of Requests for Proposals

and

Purchasing will provide a report to Council **monthly** outlining all awards that fall within Staff Authorized Awards in excess of **\$25,000**

4. Update References and Related Policies to include the Comprehensive Economic Trade Agreement and the Canadian Free Trade Agreement.

E. The Blue Mountains’ Strategic Plan

Goal #4: Promote a Culture of Organizational and Operational Excellence
Objective #4: To Be a Financially Responsible Organization

F. Environmental Impacts

None

G. Financial Impact

None

H. In consultation with

Ruth Prince, Director of Finance and IT Services

I. Attached

1. Draft Updated Purchasing of Goods and Services Policy POL.COR.07.05

Respectfully Submitted,

Serena Wilgress
Manager of Purchasing and Risk Management

Ruth Prince
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Purchasing of Goods and Services Policy

DRAFT POL.COR.07.05

| | |
|----------------------------|--|
| Policy Type: | Corporate Policy (Approved by Council) |
| Date Approved: | November 28, 2016 |
| Revisions Approved: | June 25, 2018 |
| Department: | Finance and IT Services |
| Staff Report: | FAF.16.102, FAF. 18.108 |
| By-Law No.: | 2016-69 |

Policy Statement

The goals of this policy are:

- I. To promote and maintain the integrity of the purchasing process;
- II. To obtain the best value by ensuring quality, efficiency and effectiveness.

Purpose

This policy will ensure openness, accountability and transparency of Town purchasing while protecting the financial best interest of the Town of The Blue Mountains.

This policy will outline the guiding principles of public procurement and the approach that the Town of The Blue Mountains and its operating departments will take when procuring goods and services. The detailed purchasing procedures shall be consulted prior to proceeding with any procurement.

The Town shall:

- Encourage competition amongst suppliers by using an open, transparent and fair process;
- Assist and provide direction to Staff, Vendors and Council relating to the procurement process;
- Where practicable, provide accessibility for persons with disabilities when purchasing goods, services and construction;

- Be environmentally conscious through the purchase of goods and services;
- Strive to ensure ethical purchasing practices are used by all staff.

Application

This policy applies to all Staff, Council and Boards of Town of The Blue Mountains with respect to the Town's procurement activities.

Procedures

The Manager of Purchasing shall have the authority to develop procedures to implement this policy in association with the Senior Management Team.

The Purchasing Procedures will be approved by the Senior Management Team and are to be used as instruction for staff when purchasing goods or services in compliance with this policy.

The Manager of Purchasing will administer this policy.

Any question involving the meaning or application of this policy is to be submitted to the Manager of Purchasing who will resolve the question.

No contract or purchase shall be divided to avoid any requirements of this policy.

Procurement Methods

All purchase of goods, services and construction shall be undertaken utilizing one of the following methods of procurement, using standardized documents.

Where long term, valued relationships exist with material, equipment or support services providers, they should be examined periodically to ensure that the Town is getting the best value when purchasing.

1. Informal Processes

Informal processes are to be completed by the user department and shall include direct purchase or Informal Quotations. It will also include the Request for Quote process where Purchasing will assist in the document creation with the user department.

2. Direct Purchasing

Direct purchase, as described below, may be used when:

- 2.1. The dollar value of the item is equal to or less than \$5,000
- 2.2. The item is not covered under a Blanket Order Contract

3. Request for Quotation (RFQ)

Request for Quotation procedures will be used when:

- 3.1. The cost of the item is between \$5,000 and \$24,999
- 3.2. The ability exists to detail what is being purchased
- 3.3. Document title will be consecutively numbered based on the Town's numbering and naming convention. User division shall request such number.
- 3.4. Best Value for the Town can be achieved by an Award selection made on the basis of the lowest compliant bid that meets specifications

4. Formal Processes

Formal processes will be issued by Purchasing and shall include Request for Tender or Request for Proposal.

5. Request for Tender (RFT)

RFT procedures shall be used when:

- 5.1. The cost of the item is greater than \$25,000
- 5.2. The ability exists to detail what is being purchased
- 5.3. Best Value for the Town can be achieved by an Award selection made on the basis of the lowest compliant bid that meets minimum specifications

6. Request for Proposal (RFP)

Request for Proposal procedures shall be used when:

- 6.1. The requirement is best described in a general performance specification
- 6.2. Innovative solutions are sought
- 6.3. The Award selection will be made based on a fully disclosed evaluation method involving a combination of mandatory and desirable requirements

7. Other Processes

8. Blanket Order Contracts

Blanket Order Contracts occur as a result of a previous competitive bid, which establishes the successful bidder as the preferred source for a product or service over a specific term.

9. Rotational Rosters

A Rotational Roster is the result of a competitive bidding process, which prequalifies vendors to be placed on a list where they will be provided an equal opportunity to perform work for the Town as it becomes available.

10. Unsolicited Proposals

Unsolicited bids received by the Town shall be reviewed by the respective Department Head and Purchasing. Unsolicited proposals must be in writing detailing information on a product or service that may provide the Town with significant value or savings.

11. Cooperative Purchasing

The Manager of Purchasing and Department Head(s) are hereby authorized to participate in cooperative purchasing arrangements with other municipalities, counties/regions, associations, local boards and public agencies within the Province. The procurement policies or procurement by-law of the host agency will apply upon the Manager of Purchasing and Department Head(s) satisfying themselves that the host agency will be proceeding to the open market to obtain competitive pricing. Award approvals of all Co-operative Purchasing contracts shall be in accordance with the Purchasing Procedures. Notice of Participation in cooperative purchases will be posted annually to the Town's website in accordance with the requirements of CETA and CFTA.

12. Sole and Single Sourcing

Sole Sourcing is a method of procurement whereby a purchase order is issued or contract awarded without a competitive bidding process due to the fact that the supplier is the only source of supply for the required goods or services.

Single Sourcing is a method of procurement whereby there is more than one vendor able to supply and a purchase order is issued or contract awarded without a competitive bidding process.

The use of Sole and Single Sourcing with a particular vendor exceeding \$25,000 must be reported to Council. Any single or sole sourcing with an amount between \$5000 and \$24,999 must be reported to Manager of Purchasing by the applicable Director. In order for a division to sole or single source for goods or services exceeding \$25,000, an operating strategy must be presented with Purchasing input and approved by Council, outlining the rationale. Input must be sought from the Manager of Purchasing to ensure the purchasing principles in the Town's Procedures are taken into consideration and risk to the Town is minimized.

13. Negotiation

Negotiation may only be used under the following circumstances:

- 13.1. Those outlined above within Sole and Single Sourcing
- 13.2. As a result of an RFP process, if required
- 13.3. With respect to RFT's, and RFQ's, the Town may enter into negotiations with the lowest compliant bidder if the price bid is over the budgeted amount for the project. Should the Town be unable to reach an agreement with the lowest compliant bidder, the Town reserves the right to enter into negotiations with the next lowest compliant bidder, to cancel the bid opportunity or to present a report to Council whichever is deemed to be in the best interest of the Town.

It is the responsibility of Purchasing to ensure that all competitive bidding options have been considered prior to the negotiation method being utilized.

14. Procurement in Emergencies

Notwithstanding the provisions of this by-law, an emergency purchase shall be made when an event occurs that is determined by the Mayor, the C.A.O. and/or Department Head to be a threat. Where in the above opinion an emergency has occurred, non-competitive procurement or negotiation methods may be utilized.

15. Non-Competitive Purchases

Under the direction and control of Purchasing, the requirement for competitive bid solicitation for goods and services may be waived under the authority of this Policy and replaced with Negotiations.

16. Request for Expression of Interest

Requests for Expression of Interest may be issued to prequalify vendors for various projects or purchases or to obtain information on the availability and interest of suppliers of any goods or services. Requests for Expression of Interest may or may not result in the development of a list of available suppliers.

17. Request for Pre-Qualification (RFPQ)

RFPQ may be issued to prequalify vendors for various projects or purchases. The purpose of an RFPQ is to determine whether the qualifications of a bidder, as required by the Town, are at a level that will allow participation in a subsequent bidding opportunity that takes place as a direct result of the Request for Pre-Qualification.

18. Request for Information (RFI)

An RFI may be issued by Managers/Purchasing to provide staff with specifications for future use.

An RFI may be issued in advance of a formal bid process to assist in the development of a more definitive set of terms and conditions, scope of work/service and the selection of qualified Vendors.

An RFI may or may not lead to a formal bid process.

19. Goods and Services Exempt From Procurement Policy

The purchasing methods described in this Procedure do not apply to the following Goods and Services:

- a) Training and Education
- b) Registration, accommodation and tuition fees for conferences, conventions, courses and seminars
- c) Magazines, books and periodicals
- d) Memberships
- e) Staff development or staff workshops
- f) Refundable Employee/Councillor Expenses
- g) Advances
- h) Meal allowances
- i) Travel (fuel, accommodation etc.)
- j) Ongoing maintenance for existing computer hardware and software
- k) Employer's General Expenses
- l) Payroll Deduction Remittances
- m) Medicals
- n) Licenses
- o) Debenture Payments
- p) Grants to Agencies
- q) Damage Claims
- r) Tax Remittances
- s) Insurance Premium payments
- t) Refunds to property owners (property tax, building permit, entrance permit, etc.)
- u) Professional and Special Services up to \$100,000 including:
 - i. Committee fees, witness fees
 - ii. Realty services regarding lease, acquisition, demolition, sale, disposal or appraisal of land
 - iii. Advertising services required in radio, television, newspaper or magazines
 - iv. Bailiff or collection agencies
 - v. Freight charges
 - vi. Utilities
- v) Performance / Artist's Fees
- w) Employee Group Benefits
- x) All legal services and fees
- y) Professional and Special Services exceeding \$100,000 must be procured formally.

20. Authorizations

Council has the ultimate authority for all expenditures. Council provides the authority to Staff for the initiation and completion of procurement processes for goods, services and construction through the authorization of annual budgets or resolutions.

21. Council Approval Required

Despite any other provisions of this Policy, the following procurements, over \$24,999, excluding taxes, are subject to prior Council approval:

- 21.1. Any contract requiring approval from the Ontario Municipal Board
- 21.2. Any acquisition of goods or services that is not already approved in the current year's budget, such as items requiring pre-budget approval or post-budget amendments, must be reported to Council in order to have the expenditure authorized via resolution
- 21.3. Where the net revenue amount proposed for acceptance is lower than the Council approved budget
- 21.4. Any contract where the award is not being recommended to the lowest compliant bidder, with the exception of Request for Proposals
- 21.5. Any contract anticipated to be financed by debentures

Purchasing will provide a report to Council on a monthly basis outlining all awards that fall within Staff Authorized Awards in excess of \$25,000.

22. Authority to Reallocate Approved Budget Funds

To ensure proper expenditure management and budget accountability, each Director is responsible for ensuring that all purchases remain within the Department's approved operating budget or approved capital project budget, unless otherwise provided for in this policy.

Reallocation of funds between Operating Budgets and Capital Budgets is not permitted under any circumstances.

In order to allow purchases to proceed which exceed the approved budget, a Director shall have the authority to reallocate funds, without exceeding the aggregate budget within their control, under the following conditions:

Operating Budget

- 22.1. The shortfall for the purchase of the goods or service is less than \$10,000;
- 22.2. All changes must be one-time and shall not affect the base budget;

- 22.3. Reallocations may only occur within or between supplies and services accounts;
- 22.4. General scope of work or service delivery method cannot be changed;
- 22.5. The funding source must be the same for all accounts affected by the reallocation.

Capital Budget

- 22.6. The shortfall cannot exceed 20% of the project budget to a maximum of \$75,000;
- 22.7. General scope of work or service delivery method cannot be changed;
- 22.8. If reallocating funds from a capital project/component, the capital project/component in which funds are being transferred from must already be an Awarded project/component;
- 22.9. Revised Bid Award Form must be completed when funds are reallocated;
- 22.10. The funding source must be the same for all accounts affected by the reallocation.

All other budget over-runs must be approved by Council before Award is made.

23.Authority to Award

This section outlines the Authority to Award a Bid in accordance with the intent of the purchasing methods outlined in this policy.

The full amount, excluding applicable net taxes, for the supply of Goods, Services or Construction shall be considered when determining the Authority to Award.

| Authority to Award | Dollar Value | Method of Procurement if Formal or Informal | Method of Award |
|---|--|--|--|
| Council | Unlimited | n/a | Council Resolution |
| CAO, Director and Manager of Purchasing | \$250,000 or greater | Tender or RFP | Bid Award Form |
| Director and Manager of Purchasing | \$25,000 up to but not including \$250,000 | Tender or RFP | Bid Award Form |
| Manager or designate | Less than \$25,000 | Direct Purchase | Bid Award Form (if no budget reallocation) |

24. Authority for Payment

Authority for Payment in this schedule relates to payments of amounts contained in approved budgets or by Resolution only. During scheduled absences, Directors are able to delegate signing authority to selected individual(s) with a written notice to the Director of Finance.

Regulatory payments (payroll deductions etc.) are excluded from this schedule.

The numbers in this table are maximums. Directors have the right to lower these numbers at their discretion.

Authority limits for payment are as follows:

| POSITION | DETAIL | LIMIT |
|---|---|--------------------------------|
| Chief Administrative Officer | All expenditures | As per Council approved budget |
| Director / Fire Chief / Chief Librarian | All expenditures | As per Council approved budget |
| Supervisory Staff as designated by Director | General Purposes – day-to-day departmental requirements | \$100,000 |
| Senior Staff as designated by Director | General Purposes – day-to-day departmental requirements | \$25,000 |
| General Staff as designated by Director | General Purposes – day-to-day departmental requirements | \$5,000 |

25. Irregularities Contained in Bids

The following list of irregularities should not be considered all inclusive. The Purchasing Manager and, as may be warranted, in consultation with any or a selection of the following, respective departmental staff, C.A.O. and/or the Town’s Solicitor, shall review irregularities not specifically listed and, acting in the best interests of the Town, have authority to waive such irregularities, permit correction to the irregularity or reject the submission.

| | Irregularity | Response |
|----|--|---|
| 1. | Late Submissions. | Rejection; not opened or read publicly. Submission to be returned to submitter. |
| 2. | Insufficient Financial Security (No bid bond/deposit or agreement to bond or insufficient bid bond/deposit). | Automatic Rejection for no bid deposit. Automatic Rejection for no agreement to bond. 48 hours to correct shortfall in bid deposit if less than required by no more than 10%. |

| | Irregularity | Response |
|-----|---|---|
| 3. | Conditional Bids (Bids qualified or restricted by an attached statement). | Automatic rejection unless, in the opinion of Department Head and Purchasing, the qualification or restriction is insignificant. |
| 4. | Illegible or obscure Bids, non-initialed erasures, non-initialed alterations. | Automatic rejection. |
| 5. | Documents, in which all necessary Addenda which have significant financial or scope implications in the opinion of the Purchasing Manager and user group, have not been acknowledged. | Automatic rejection. |
| 6. | Documents in which all necessary Addenda which do not have significant financial or scope implications in the opinion of the Purchasing Manager and user group, and have not been acknowledged. | 48 hours to submit. |
| 7. | Bids received from bidders who did not attend mandatory site visit(s). | Automatic rejection. |
| 8. | Bids received on documents other than those provided by the Town, when specified to do so. | Automatic rejection. |
| 9. | Failure to insert the bidder's business name in the space(s) provided on Mandatory Submission Pages. | 48 hours to submit. |
| 10. | Failure to include signature of the person authorized to bind the bidder in the space provided on the Tender / Proposal Form. | 48 hours to submit. |
| 11. | More than one submission from the same submitter and not identified as an alternative or optional submission and no written withdrawal notice has been received. | The submission package bearing the most recent date/time stamp will be considered the intended submission and the previously date/time stamped submissions will be considered withdrawn and will be returned to sender, unopened. |

| | Irregularity | Response |
|-----|-------------------------------------|--|
| 12. | Bids Containing Mathematical Errors | <p>If the amount tendered for a unit price item does not agree with the extension of the estimated quantity and the tendered unit price, or if the extension has not been made, the unit price shall govern and the total price shall be corrected accordingly.</p> <p>If both the unit price and the total price are left blank, the Bid will be rejected as incomplete.</p> <p>If the unit price is left blank but a total price is shown for the item, the unit price shall be corrected according to the total provided.</p> <p>If the Tender contains an error in addition and/or subtraction in the approved tender documentation format requested (i.e. not the additional supporting documentation supplied), the error shall be corrected and the corrected total Contract price shall govern.</p> <p>Tenders containing prices which appear to be so unbalanced as to likely affect the interests of the Town adversely will be clarified and may be rejected.</p> |
| 13. | Other minor irregularities | <p>Purchasing, in conjunction with the Director of Finance shall have authority to waive irregularities, which they jointly consider to be minor.</p> |
| 14. | Any irregularity | <p>Despite all provisions herein contained, Purchasing in conjunction with the members of the Senior Management Team may waive any irregularity where it considers it to be in the best interest of the Town.</p> |

26.Accessibility and Procurement

Town of The Blue Mountains is a major purchaser of goods and services. It is important that procurement processes are inclusive so that all vendors can participate, and all contracted parties are aware of the need to provide accessible goods and services.

Exclusions

n/a

References and Related Policies

Procurement Legislation and Guidelines

The Municipal Act, 2001, Part VI, Section 270, as amended states that before January 1, 2005, a municipality shall adopt and maintain a policy with respect to procurement of goods and services. Although procurement is governed by Contract Law, there are various Trade Agreements and Guidelines to be considered.

I Contract Law in Canada

A contract is any legally enforceable agreement. Any agreement to purchase is a contract if it involves the following elements:

- a. A legal offer that is clearly defined – offers must be unambiguous, not vague
- b. Acceptance of said offer. Acceptance terms must match offer terms
- c. Legal consideration – both parties have given something of value
- d. Legal purposes – contract must be of/for legal goods and/or services
- e. Legal intention – each participant must have intended to be part of the contract
- f. Competence – or legal capacity to enter into a contract

Verbal Contracts – although legal and binding, are always vague and lack important terms and conditions; any deals should be in writing wherever possible.

II Trade Agreements

Canadian Free Trade Agreement
Comprehensive Economic Trade Agreement
Agreement on the Opening of Public Procurement for Ontario and Quebec
Agreement on Internal Trade

III The Discriminatory Business Practices Act

The purpose and intent of this Act is to prevent discrimination in Ontario on the ground of race, creed, colour, nationality, and ancestry, place of origin, sex or geographical location of persons employed in or engaging in business. R.S.O. 1990, c. D.12, s. 2.

IV Conflict of Interest Act

It is a criminal offence when an elected politician, public official or government employee acts contrary to his or her duty to the public to obtain a personal benefit per Section 122 of the Criminal Code.

Consequences of Non-Compliance

Failure to adhere to the requirements outlined in this Policy may lead to progressive disciplinary action up to and including termination of employment.

Review Cycle

This Policy will be reviewed at least once every term of Council.