

# COUNCIL POLICIES AND PROCEDURES

## SECTION-H

### MISCELLANEOUS

**SUBJECT:** PROCUREMENT

**NUMBER H-9**

**AMENDED:** June 11, 2014

#### **1.0 PURPOSE**

The purpose of this Procurement Policy is to provide guidance to all employees of the Municipality of the District of Guysborough and members of Council concerning procurement activities and to ensure that the principles of public procurement set forth in the Public Procurement Act, S.N.S. 2011, c. 12 are followed.

The Municipality of the District of Guysborough is committed to:

- providing for the procurement of Goods, Services, Construction and Facilities in a fair, open, consistent, and transparent manner resulting in the best value for the Municipality;
- encouraging competition, innovative ideas and solutions, while respecting all legislative and trade agreement obligations;
- promoting sustainable procurement in procurement decisions, including identifying and exploring opportunities to work with and support social enterprises and businesses that are owned by, and who employ, under-represented populations;
- ensuring that qualified suppliers have equal opportunity to bid on the Municipality's Procurement Activity; and
- accountability for procurement decisions.

#### **2.0 DEFINITIONS**

**2.1 "Alternative Procurement Practice"** means the purchase of Goods, Services, Construction or Facilities without public advertisement or competitive process, in accordance with the circumstances set forth in Section 5.0 – Alternative Procurement Practices.

**2.2 "Atlantic Standard Terms and Conditions"** means the standard instructions supporting public procurement of goods and services issued by the four Atlantic Provinces, as may be amended from time to time.

**2.3 "Best Value"** means the best value for the Municipality, as determined by the

Municipality, taking into account purchase price and life cycle cost considerations, as well as Sustainable Procurement, delivery, servicing and the capacity of the Supplier to meet other criteria stipulated by the Municipality.

- 2.4 **"CAO"** means the Chief Administrative Officer of the Municipality.
- 2.5 **"Conflict"** has the meaning given thereto in Section 7.4 – Conflict of Interest.
- 2.6 **"Construction"** means the construction, reconstruction, demolition, repair or renovation of a building, structure, road or other engineering or architectural work, excluding the professional consulting services related to the construction contract unless they are included in the procurement.
- 2.7 **"Construction Contract Guidelines"** means the standard instructions developed in consultation with the Construction Association of Nova Scotia providing a process for the administration of the Province of Nova Scotia construction contracts.
- 2.8 **"Council"** means the Municipal Council of the Municipality.
- 2.9 **"Goods"** means materials, furniture, merchandise, equipment, stationery, and other supplies required by the Municipality for the transaction of its business and affairs, and includes services incidental to the provision of such supplies.
- 2.10 **"Facilities"** mean all building lease requirements covering the conveyance of the right to use tangible building property for a specified period of time in return for rent.
- 2.11 **"Municipality"** means the Municipality of the District of Guysborough.
- 2.12 **"Policy"** means this Procurement Policy.
- 2.13 **"Procurement Activity"** means the acquisition of all Goods, Services, Construction or Facilities by purchase, lease, or long-term rental.
- 2.14 **"Procurement Value"** means the value of the total contract for procurement excluding taxes but including all options whether exercised or not. For Facilities, the value shall be determined by the monthly lease/rent multiplied by the term of the contract.
- 2.15 **"Procurement Web Portal"** means the public website maintained by the Government of Nova Scotia where notice of intended procurement for Goods, Services, Construction and Facilities is advertised.
- 2.16 **"Services"** mean services required by the Municipality for the transaction of its business and affairs, excluding services provided by an employee through a personal services contract.
- 2.17 **"Supplier"** means a person carrying on the business of providing Goods, Services, Construction and Facilities.

**2.18 "Sustainable Procurement"** means procurement which seeks to obtain Best Value for the Municipality by integrating environmental, economic and social considerations in the procurement process.

**3.0 APPLICATION**

**3.1** This Policy applies to the Procurement Activity of the Municipality beginning **[Insert Date]**, but does not apply to procurement:

- a. by the Municipality from organizations owned or controlled by the Municipality;
- b. where a construction project is managed by a third party on behalf of the Municipality, in which case the procurement for the project shall be in accordance with the contract between the Municipality and the third party, and in accordance with generally accepted procurement practices.

**3.2** The CAO shall be responsible for ensuring compliance with this Policy and may delegate authority under this Policy to an employee of the Municipality, such delegation being documented in writing and provided to Council.

**3.3** The CAO may authorize procedures consistent with this Policy and has the authority to award or purchase Goods, Services, Construction and Facilities that are within the budgets approved by Council.

**3.4** Employees of the Municipality who have responsibility for Procurement Activity shall adhere to this Policy. Failure to adhere to this Policy may result in a temporary or permanent loss of procurement privileges, disciplinary or other action and/or dismissal.

**4.0 PROCUREMENT DIRECTIVES**

**4.1 Low Value Procurement**

<b>Goods</b>	up to and including \$ 25,000
<b>Services</b>	up to and including \$ 50,000
<b>Facilities</b>	up to and including \$ 50,000
<b>Construction</b>	up to and including \$100,000

Unless using an Alternative Procurement Practice or accessing a standing offer established in accordance with Appendix "A" – Procurement by Public Advertisement, for Procurement Activity involving Goods, Services, Construction or Facilities with a Procurement Value (excluding taxes) as outlined in this Section 4.1 – Low Procurement Value, the Municipality shall, to the extent it deems practicable, attempt to obtain at least three quotes and award to a Supplier offering the Best Value.

When selecting the list of Suppliers to be provided the opportunity to quote, the Municipality shall make every effort to ensure that a fair and open process is followed.

While employees of the Municipality are expected to invite only qualified Suppliers, they are not to consistently invite quotes from only one or a select group of Suppliers. Opportunities to participate in procurement selection are to be equitably distributed among all potential participants in an area, and all interested and qualified Suppliers are to be evaluated on a consistent and equitable basis. Where, in the opinion of the Municipality, increased competition is appropriate, the Municipality may, in its discretion, choose to use one of the procurement methods set forth in Appendix "A" – Procurement by Public Advertisement to procure Goods, Services, Construction or Facilities within the thresholds set forth herein.

#### 4.2 High Value Procurement

<b>Goods</b>	over	\$ 25,000
<b>Services</b>	over	\$ 50,000
<b>Facilities</b>	over	\$ 50,000
<b>Construction</b>	over	\$100,000

Unless using an Alternative Procurement Practice or accessing a standing offer established in accordance with Appendix "A" – Procurement by Public Advertisement, all Procurement Activity involving Goods, Services, Construction or Facilities with a Procurement Value (excluding taxes) over the thresholds outlined above, shall be conducted by public advertisement using one of the procurement methods set forth in Appendix "A" – Procurement by Public Advertisement.

The following requirements apply to procurement by the Municipality through public advertisement using any of the methods set forth in Appendix "A" – Procurement by Public Advertisement:

- a. All procurement opportunities shall be posted on the Procurement Web Portal. The Municipality may, in its discretion, also post to the Municipal website and advertise in local, provincial or national media; however, there is no obligation to do so. A notice of the procurement by public advertisement may be sent to selected Suppliers where, in the discretion of the Municipality, it is deemed necessary to ensure an adequate degree of competition.
- b. The Municipality shall also post on the Procurement Web Portal the name of the successful Supplier for the procurement by public advertisement and the contract amount awarded.
- c. Every procurement opportunity shall include or have attached the terms and conditions that govern the purchase of Goods, Services, Construction or Facilities. The terms and conditions of every procurement by public advertisement shall be consistent with the Atlantic Standard Terms and Conditions for the procurement of goods or services and the Construction Contract Guidelines for the procurement of construction.

## **5.0 ALTERNATIVE PROCUREMENT PRACTICES**

In order to balance the need for an open, competitive procurement process with the requirements of urgent or specialized circumstances, the Municipality may, in the circumstances described in this Section, purchase Goods, Services, Construction or Facilities without a competitive procurement process, regardless of the value of the Goods, Services, Construction or Facilities to be procured.

### **5.1 Alternative Procurement Approval, Consultation and Reporting**

#### **Low Value Procurement**

The CAO may delegate signing authority for alternative procurement transactions involving Goods, Services, Construction or Facilities with a Procurement Value (excluding taxes) as outlined in Section 4.1 – Low Procurement to the Director, Manager or Supervisor of a user department. No further approvals will be necessary. The CAO will ensure that persons with delegated signing authority will be held accountable for their actions and that all procurement activities by Employees of the Municipality are properly documented and filed for follow up and audit. The CAO shall remain accountable for the proper use of alternative procurement transactions.

#### **High Value Procurement**

Employees of the Municipality wishing to make use of an Alternative Procurement Practice involving Goods, Services, Construction or Facilities with a Procurement Value (excluding taxes) over the thresholds outlined in Section 4.2 – High Value Procurement shall consult with the CAO to obtain approval and identify the most appropriate means by which to proceed with the satisfaction of the requirement. If in agreement, the CAO may direct employees of the Municipality to proceed with the procurement.

The CAO may delegate signing authority for high value alternative procurement transactions to an employee of the Municipality in the CAO's absence. All documentation concerning such delegation and the activities of a delegate shall be maintained on file for audit purposes. The CAO will ensure that persons with delegated signing authority shall be accountable for their actions. The CAO shall remain accountable for the proper use of alternative procurement transactions.

### **5.2 Alternative Procurement Circumstances**

The CAO may authorize an Alternative Procurement Practice in the following circumstances:

- a. When an unforeseen situation of urgency exists and the Goods, Services, Construction or Facilities cannot be obtained in time by means of open procurement procedures.

- b. Where Goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through a public procurement process could reasonably be expected to compromise confidentiality, cause economic disruption otherwise be contrary to the public interest.
- c. Where compliance with the open procurement provisions of this Policy would interfere with the Municipality's ability to maintain security or order, or to protect human, animal or plant life or health.
- d. In the absence of responses to an open or selective procurement process, or when the responses submitted have not been in conformity with the essential requirements in the tender.
- e. To ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licenses, copyright and patent rights, or to maintain specialized products that shall be maintained by the manufacturer or its representative.
- f. Where there is an absence of competition for technical reasons and the Goods or Services can be supplied only by a particular Supplier and no alternative or substitute exists.
- g. For the procurement of Goods or Services the supply of which is controlled by a Supplier that is a statutory monopoly.
- h. For the purchase of Goods on a commodity market.
- i. For work to be performed on or about a leased building or portions thereof that may be performed only by the lessor.
- j. For work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work.
- k. For the procurement of a prototype or a first Good or Service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases.
- l. For the purchase of Goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases.
- m. For the procurement of original artwork.
- n. For the procurement of Goods intended for resale to the public.
- o. For the procurement of real property.

- p. For the procurement of subscriptions to newspapers, magazines or other periodicals.
- q. For procurement from philanthropic institutions, prison labour, persons with disabilities, sheltered workshop programs or through employment equity programs.
- r. For procurement from a public body or non-profit organization.
- s. For the procurement of Services of expert witnesses, specifically in anticipation of litigation or for the purpose of conducting litigation.

To ensure appropriate use of this section, the reason for using an alternative procurement practice shall be documented and maintained for audit purposes, and the corresponding paragraph of this section shall be referenced.

## **6.0 OPENING OF RESPONSES, EVALUATION AND AWARD**

### **6.1 Opening of Responses**

Responses to procurement by public advertisement are accepted in accordance with the closing time, date and place stipulated in the procurement documents. Members of the public may receive the list of participants in the procurement process electronically after the opening of responses.

### **6.2 Evaluation of Responses**

All responses are subject to evaluation after opening and before the award of contract. The procurement documents shall clearly identify the requirements of the procurement, the method of evaluation, evaluation criteria based on the purpose and objectives of this Policy, and the weight assigned to each criterion.

### **6.3 Sustainable Procurement**

Pursuant to the Public Procurement Act, in evaluating which Goods, Services, Construction or Facilities offer Best Value to the Municipality, the Municipality may consider sustainability criteria including environmental considerations, social considerations, and economic considerations. Where possible, and where it is in the best interest of the Municipality to do so, the Municipality may integrate the following considerations in the procurement process:

- a. Environmental considerations: e.g. greenhouse gas reduction, waste reduction, toxic use reduction.
- b. Economic considerations: e.g. life cycle cost, fiscal responsibility, support for the local economy.

- c. Social considerations: e.g. employee health and safety, inclusiveness and fair wages, and health promotion.

All requests for quotations and procurements pursuant to Appendix "A" shall list the sustainability criteria that apply to the procurement. Where the lowest total cost is not intended to be the sole determining factor in achieving Best Value on which the award will be made, the tender documents shall contain a description of the method to be used to evaluate the bids and a weighted scale of each factor.

#### **6.4 Award**

The winning Supplier in a procurement by public advertisement and the contract award amount for all Procurement Activity involving Goods, Services, Construction or Facilities with a Procurement Value (excluding taxes) over the thresholds outlined in Section 4.2 – High Value Procurement shall be posted on the Procurement Web Portal. After the award of contract, routine access to information shall be provided in the following areas:

- list of Suppliers participating in the procurement process;
- name of winning Supplier; and
- award price of the contract, excluding taxes.

Access to responses submitted in a public procurement process or other proprietary information is subject to the freedom of information and protection of privacy provisions of the Municipal Government Act.

#### **6.5 Supplier Debriefing**

Upon the request of a Supplier who is an unsuccessful participant in a procurement by public advertisement, the Municipality may conduct a debriefing session with that Supplier to provide feedback on the evaluation of a public tender. A debriefing shall be conducted by the CAO, or his or her designate, and shall:

- b. provide reasons for the failure of the Supplier's submission, or in the case where evaluation scoring was used, provide an overview of the supplier's score in each category and the reasons for that score;
- c. provide information to the Supplier on how to improve future submissions; and
- d. not disclose any information regarding other participants in the Public Tender or their submissions.



## **6.6 Supplier Complaint Process**

Where a Supplier is not satisfied with the information provided in a Supplier debriefing, the Supplier may file a complaint in accordance with the Supplier complaint process set out in the Public Procurement Act. This process is not a dispute resolution process, but rather intended to respond to Supplier complaints and to improve procurement processes as an integral part of a fair and open Policy.

## **7.0 OTHER PROVISIONS**

### **7.1 Professional Services**

Professional Services may, in the discretion of the Municipality, be procured by way of RFP in accordance with Appendix "A" – Procurement by Public Advertisement. These Services may be contracted up to five years on terms satisfactory to the Municipality and based upon qualifications, experience, services offered, past performance, proposed fees and other relevant considerations. The Municipality may extend the term of these services. The CAO, or his or her designate, shall carry out the RFP process by preparing the specifications for professional services and the call for proposals, carrying out the necessary interviews, and making a recommendation for Council approval.

### **7.2 Supplier Performance**

Suppliers may be subject to disqualification if, in the opinion of the Municipality, there is evidence of consistent failure to meet the standards specified by the Municipality. Suppliers may be evaluated on competitive price, quality of product, contract adherence and performance, after sales service and submissions in procurement by public advertisement.

Suppliers may be disqualified where there is evidence of:

- conviction for a criminal offence of a person or a director or official or such person relating to obtaining or attempting to obtain a contract or subcontract or an indication of lack of business integrity or honesty which directly and seriously affects the responsibility of the Supplier;
- breach of contract indicating unwillingness to perform a contract in accordance with the terms and conditions or specifications, or a record of unsatisfactory performance of one or more contracts in accordance with the terms and conditions thereof, or in accordance with its specifications, or both; or
- the offer of any gratuity to an official or employee of the Municipality by a Supplier or supplier for consideration.

A decision shall be issued to the disqualified or suspended Supplier setting out the reasons for disqualification or suspension.

### **7.3 Pre-Qualification of Bidders**

The Municipality may require Suppliers to be pre-qualified in certain circumstances. This may occur if relevant experience, capability, references, evaluation of project team members, or other criteria deemed to be in the best interest of the Municipality are significant to the acquisition of the Services required.

### **7.4 Conflict of Interest**

Employees of the Municipality and members of Council shall ensure that their conduct in relation to Procurement Activity is consistent with the duties of public sector employees as set forth in the Public Procurement Act. For the purposes of this Policy, a conflict of interest ("Conflict") is any situation or activity in which the personal, professional, or financial interests of an employee of the Municipality or member of Council affects, or may reasonably be expected to affect, his or her judgment, obligations or duties to the Municipality.

Employees of the Municipality shall immediately make full disclosure of any Conflict by reporting the Conflict to his or her immediate supervisor or the CAO. Any employee or member of Council in a Conflict shall have no involvement in the procurement process, and the responsibility of such employee for procurement will be assumed by the person to whom the employee normally reports.

Where Procurement Activity is undertaken by Council, members of Council shall adhere to the requirements of the Municipal Conflict of Interest Act, R.S.N.S. 1989, c. 299.

### **7.5 Posting of Policy:**

A copy of this Policy shall be posted on the Municipality's website.

### **7.6 Amendment**

This Policy may be amended from time to time with the approval of Council. Such amendments will be communicated to the public on the Municipality's website.

### **7.7 Vendor Outreach Activities**

The Municipality will attempt, where appropriate, to participate in vendor outreach activities as requested by the Procurement Governance Secretariat.

### **7.8 Contract and Risk Management**

Pursuant to s. 12(1)(g) of the Public Procurement Act the Municipality shall adopt and incorporate into its procurement processes contract and risk management guidelines.

## **7.9 Lease Arrangements**

Lease arrangements are subject to the provisions of this Policy, save and except that Council's authority shall be obtained for leases required by the Municipal Government Act, S.N.S. 1998 c. 18 to be authorized by Council.

## **7.10 Compliance with Policy**

Municipal staff and councilors shall act in good faith to comply with this Policy, but failure to comply with this Policy does not invalidate any procurement decision or act of the Municipality, nor is the Municipality liable to any supplier or prospective supplier for failing to comply with the Policy.

## APPENDIX "A"

### PROCUREMENT BY PUBLIC ADVERTISEMENT

The following methods of procurement may be used by the Municipality:

#### 1. **Standing Offers**

In order to guarantee a continuous supply of Goods, Services and Construction required during a particular period of time not exceeding three (3) years, Standing Offers may be established to reduce the number of individual responses from Suppliers and reduce the overall cost of purchasing in high volumes. Such arrangements between the Municipality and a supplier commit the Supplier to provide Goods, Services or Construction at a specific price for a specified period of time and may include, among others:

- a. an agreement between the Municipality and a Supplier in which the Supplier commits to providing specified Goods, Services or Construction at a specific price for a specific period of time. Such standing agreements should themselves be the subject of a competitive tender process;
- b. provincial standing offers administered by the Nova Scotia Government, including its equipment leasing program; and
- c. any other programme available to municipal units or other public sector entities such as hospitals and school boards, provided that such programs conform with this Policy.

Standing Offers shall be governed by this Policy and any administrative guidelines for the approval of Standing Offers developed by the CAO.

#### 2. **Request for Tenders**

A request for tenders is a formal invitation to submit a bid to supply specified Goods, Services, Construction or Facilities and may be used when the procurement requirements may be clearly and completely specified, bids and prices may be provided without condition and reservation, and where an award can be made without negotiation. It is a formal, competitive, sealed bidding process.

Submissions are compared to specifications and requirements contained in the tender documents and awards may be made to the lowest total cost bid received from a responsible bidder meeting all of the requirements of the tender unless determined not to be Best Value. In accordance to Section 6.2 – Evaluation of Responses and Section 6.3 – Sustainable Procurement, where the lowest total cost is not intended to be the sole determining factor in achieving Best Value on which the award will be made, the tender documents should contain a description of the method to be used to evaluate the bids and a weighted scale of each factor.

### 3. Request for Proposals

A request for proposals ("RFP") is a formal invitation to suppliers to describe how their services, methods, equipment or products can address and/or meet specific needs of the Municipality. It is used when a supplier is invited to propose a solution to a problem, requirement, or objective. Unlike tenders, proposals are compared to each other to assess the best proposal. All RFP's shall include evaluation criteria that will be used to score suppliers' proposals.

Negotiations may be conducted with bidders after the date for receipt of proposals provided such negotiations are conducted to:

- Award equitable treatment to each acceptable bidder with respect to an opportunity for discussion and revisions to its proposal; and
- Prevent the disclosure of the content of the discussion or negotiation with one bidder to another bidder.

An award of a contract based upon an RFP will be made to the supplier whose proposal is determined to be the most advantageous and/or offer Best Value to the Municipality based upon criteria for evaluation set out in the RFP and equitably applied to all proposals.

### 4. "Two Phase" Bids

Where detailed specifications are not available or it is impractical to prepare a specification based on price, a Two Phase Bid may be used, inviting bids as follows:

- **Phase One:** one or more steps in which proponents submit proposals for evaluation without prices. All two phase tender notices shall include evaluation criteria that will be used to score bidders' proposals.
- **Phase Two:** only those proponents whose bids were determined to be acceptable will be entitled to have priced bids considered. Those proponents not meeting the criteria of phase one shall have their price proposals returned to them unopened.