

COUNCIL POLICIES & PROCEDURES

SECTION-H

MISCELLANEOUS

SUBJECT: Procurement Policy

POLICY NUMBER: H-9

APPROVAL DATE: June 11, 2014

AMENDMENT DATE: October 20, 2021

POLICY

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 ("Public Procurement Act") 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 using a Public Procurement Method, in accordance with the circumstances set forth in Section 6 – 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 greatest overall benefit 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 of Interest"** means 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.
- 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"** means 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 **"Public Advertisement"** means advertisement using the Procurement Web Portal.

- 2.14 "Public Procurement Methods"** means Procurement Activity conducted by way of Public Advertisement in accordance with the methods of public procurement described in Appendix "A" – Public Procurement Methods.
- 2.15 "Procurement Activity"** means the acquisition of all Goods, Services, Construction or Facilities by purchase, lease or long-term rental.
- 2.16 "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 or rent multiplied by the term of the contract.
- 2.17 "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.
- 2.18 "Professional Services"** means those Services listed in Annex 502.1B, subsection (a) of the Agreement on Internal Trade.
- 2.19 "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.
- 2.20 "Supplier"** means a person carrying on the business of providing Goods, Services, Construction or Facilities.
- 2.21 "Sustainable Procurement"** means procurement which seeks to obtain Best Value for the Municipality by integrating environmental, economic and social considerations in the procurement process as described in Section 7.3 – Sustainable Procurement.

3 PROCUREMENT POLICY PRINCIPLES

Pursuant to the Public Procurement Act, all employees involved in procurement on behalf of the Municipality shall:

- a. ensure that Procurement Activity is conducted according to this Policy, provincial and federal legislation, trade agreements and ethical business practices;
- b. encourage and support collaborative procurement amongst public sector entities;
- c. follow leading procurement practices;
- d. in good faith, conduct business with current and prospective Suppliers and be fair in all business dealings;
- e. strive to obtain the Best Value for each expenditure;

- f. require Suppliers to provide accurate representations of Goods, Services, Construction and Facilities;
- g. encourage Suppliers to consider Sustainable Procurement in their product or service offerings;
- h. encourage the negotiation of an equitable and mutually acceptable settlement when a dispute arises; and
- i. request removal from a procurement process when a personal Conflict of Interest is perceived in accordance with Section 8.4 of this Policy.

4 APPLICATION

4.1 This Policy applies to the Procurement Activity of the Municipality beginning April 1, 2014, but does not apply to procurement:

- a. by the Municipality from organizations owned or controlled by the Municipality;
or
- 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.

4.2 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. Employees of the Municipality who have responsibility for Procurement Activity shall adhere to this Policy.

4.3 The CAO has the authority to award or purchase Goods, Services, Construction and Facilities that are within the budgets approved by Council.

4.4 The CAO may authorize procedures not covered by, but consistent with, this Policy.

5 PROCUREMENT DIRECTIVES

5.1 Low Value Procurement

Goods	up to and including \$ 25,000
Services	up to and including \$ 50,000
Facilities	up to and including \$ 50,000

Construction up to and including \$100,000

Unless using an Alternative Procurement Practice or accessing an existing standing offer which has been established in accordance with Section 1 of Appendix "A" – Public Procurement Methods, for Procurement Activity involving Goods, Services, Construction or Facilities with a Procurement Value as outlined in this Section 5.1 – Low Procurement Value, the Municipality shall, where 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 Public Procurement Methods set forth in Appendix "A" – Public Procurement Methods to procure Goods, Services, Construction or Facilities within the thresholds set forth herein.

5.2 High Value Procurement

Goods	over	\$ 25,000
Services	over	\$ 50,000
Facilities	over	\$ 50,000
Construction	over	\$100,000

Unless using an Alternative Procurement Practice or accessing an existing standing offer which has been established in accordance with Section 1 of Appendix "A" – Public Procurement Methods, all Procurement Activity involving Goods, Services, Construction or Facilities with a Procurement Value over the thresholds outlined above, shall be conducted by Public Advertisement using one of the Public Procurement Methods set forth in Appendix "A" – Public Procurement Methods.

The following apply to procurement by the Municipality when using any of the methods set forth in Appendix "A" – Public Procurement Methods:

- 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. 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.
- c. 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.

6 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 Public Procurement Method, regardless of the value of the Goods, Services, Construction or Facilities to be procured.

6.1 Alternative Procurement Approval, Consultation and Reporting

Low Value Procurement:

The CAO may delegate signing authority for alternative procurement transactions in the circumstances described in Section 6.2 – Alternative Procurement Circumstances involving Goods, Services, Construction or Facilities with a Procurement Value as outlined in Section 5.1 – 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 over the thresholds outlined in Section 5.2 – 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 employees with delegated signing authority shall

be accountable for their actions. The CAO shall remain accountable for the proper use of alternative procurement transactions.

6.2 Alternative Procurement Circumstances

The CAO or the CAO's delegate may authorize an Alternative Procurement Practice if, in his or her opinion, one of the following circumstances exist:

- a. 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. 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 or otherwise be contrary to the public interest.
- c. 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 of the procurement process.
- e. It is necessary 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. 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. The procurement of Goods or Services the supply of which is controlled by a Supplier that is a statutory monopoly.
- h. The purchase of Goods on a commodity market.
- i. Work to be performed on or about a leased building or portions thereof that may be performed only by the lessor.
- j. 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. 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. The purchase of Goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases.
- m. The procurement of original artwork.
- n. The procurement of Goods intended for resale to the public.
- o. The procurement of real property.
- p. The procurement of subscriptions to newspapers, magazines or other periodicals.
- q. The procurement from philanthropic institutions, prison labour, persons with disabilities, sheltered workshop programs, or through employment equity programmes.
- r. The procurement from a public body or non-profit organization.
- s. The procurement of Services of expert witnesses, specifically in anticipation of litigation or for the purpose of conducting litigation.

To ensure appropriate use of Section 6 – Alternative Procurement Practices, the reason for using an Alternative Procurement Practice shall be documented and maintained for audit purposes, and the corresponding paragraph of this Section 6.2 shall be referenced.

7 OPENING OF RESPONSES, EVALUATION AND AWARD

7.1 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. Responses can be submitted in person, via fax or email to tenders@modg.ca. Members of the public may receive the list of participants in the procurement process electronically after the opening of responses.

7.2 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.

7.3 Sustainable Procurement

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 Public Procurement Methods 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.

7.4 Award

The successful 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 over the thresholds outlined in Section 5.2 – 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 successful 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.

7.5 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 response. A debriefing shall be conducted by the CAO, or the CAO's designate, and shall:

- a. provide reasons for the failure of the Supplier's response, 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;

- b. provide information to the Supplier on how to improve future responses; and
- c. not disclose any information regarding other participants in the Public Tender or their responses.

7.6 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.

8 OTHER PROVISIONS

8.1 Professional Services

Professional Services may, in the discretion of the Municipality, be procured by way of RFP in accordance with Appendix "A" – Public Procurement Methods. These Professional Services may be contracted up to five (5) 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 Professional Services. The CAO, or the CAO's 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.

8.2 Supplier Performance

Suppliers may be subject to suspension or 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 responses to procurement by Public Advertisement.

Suppliers may be suspended or 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.

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

8.3 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.

8.4 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.

Employees of the Municipality shall immediately make full disclosure of any Conflict of Interest by reporting the Conflict of Interest to his or her immediate supervisor or the CAO. Any employee or member of Council in a Conflict of Interest 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.

8.5 Posting of Policy

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

8.6 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.

8.7 Vendor Outreach Activities

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

8.8 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.

8.9 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.

8.10 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"

PUBLIC PROCUREMENT METHODS

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

1. Request for 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 procurement 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 programmes conform to 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.

Responses 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 with Section 7.2 – Evaluation of Responses and Section 7.3 – 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 RFPs shall include evaluation criteria that will be used to score Suppliers' proposals.

When specified in the tender documents, negotiations may be conducted with bidders after the date for receipt of proposals provided such negotiations are conducted to:

- Afford 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 bids for evaluation without prices. All two phase tender notices shall include evaluation criteria that will be used to score proponents' bids.
- **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 bids returned to them unopened.

5. Other Public Procurement Methods

The Municipality may, from time to time, make use of other generally accepted Public Procurement Methods in its Procurement Activity.