



**Title: FAS-011 Strategic Procurement Policy**

Subject: <b>Strategic Procurement Policy</b>	Category: <b>Finance and Administrative Services</b>
Policy No.: FAS-011	M&C Report No.: M&C 2023-156
Effective Date: June 19, 2023	Next Review Date: (3 Years)
Area(s) this policy applies to: <b>All areas</b>	Office Responsible for review of this Policy: <b>Finance and Administrative Services</b>
Related Instruments:	Policy Sponsors: <b>Chief Financial Officer</b>
	Document Pages: <b>This document consists of 30 pages.</b>

Revision History:

Policy Date: 2011-12-05 Report: M&C 2011-317

Common Clerk's Annotation for Official Record

Date of Passage of Current Framework: June 19, 2023

I certify that this Policy was adopted by Common Council as indicated above.

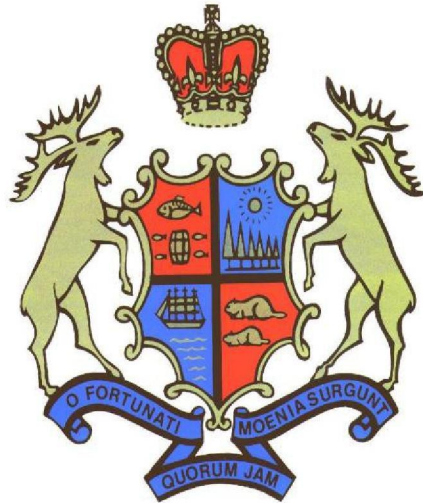


Common Clerk

June 21, 2023

Date

Date Created: 2023-06-06	Common Council Approval Date: June 19, 2023	Contact: <b>Finance and Administrative Services</b>
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## Strategic Procurement Policy

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# STRATEGIC PROCUREMENT POLICY

## SECTION 1 – PURPOSE AND PRINCIPLES

### 1.1 Purpose

The purpose of this policy is to detail the principles, procedures, roles, and responsibilities for the City's Procurement operations.

The City recognizes that the taxpayers expect and have the right to receive a high level of services at the best value. The City is committed to maintaining a high standard of professionalism in the management of its public resources. The strategic objectives of the City's business practices are reflected in this policy.

This policy establishes the accountability to ensure that economically, socially and environmentally responsible acquisitions include goods, services, inventory, vehicles, equipment, infrastructure, construction, and capital expenditures.

The City will take the necessary actions to ensure it complies with applicable trade agreements, legislated requirements, and best procurement practices in the public sector. All competitive opportunities will be open where required, fair, and transparent.

This policy applies to the procurement of all goods, services and construction for the City. This policy and its corresponding Procurement Procedures Manual is administered by Supply Chain Management under the direction of the CAO.

### 1.2 Principles – Strategic Procurement Policy Statement

The City benefits from the alignment of its administrative and operational duties to meet its long-term objectives. The City wants to ensure best value is realized in all its procurement activities.

This policy is one of the means by which the City can affect social and economic development to achieve best value for its citizens. Through procurement actions, the City can achieve best value for its citizens which can result in social, environmental and economic benefits. This policy will assist in obtaining best value and alignment with existing corporate plans (including but not limited to the City's Climate Action Plan, Ten-Year Strategic Plan and Ten-Year Financial Plan).

The City is committed to conducting its Procurement operations in accordance with the following principles:

- (a) compliance and consistency with applicable legislation, trade agreements, policies, and procedures;
- (b) open, fair, and transparent processes that afford equal access to all qualified Suppliers;

- (c) reciprocal non-discrimination and geographic neutrality with respect to its trading partners in accordance with trade treaty obligations;
- (d) achieving best value through consideration of the full range of Procurement Methods and the adoption of commercially reasonable business practices;
- (e) effective balance between accountability and efficiency;
- (f) ensuring adherence to the highest standards of ethical conduct;
- (g) establishing standardization of goods, equipment, and technology wherever possible to realize best value;
- (h) procuring goods and services with due regard to the use of responsible products without compromising a healthy, safe, relevant, and aesthetically acceptable learning and working environment;
- (i) procuring the necessary quality and quantity of goods and services in an efficient, responsive, and cost-effective manner;
- (j) ensuring that administrative effort and expense are to be commensurate with the value of the purchase;
- (k) ensuring that the City is not unduly exposed to risk in all procurement-related transactions;
- (l) ensuring business processes are conducted with fairness, integrity, accountability, and transparency; and
- (m) ensuring that all procurement awards and contracts are free of any conflicts of interest or bias.

### **1.3 Role of Supply Chain Management**

Supply Chain Management is responsible for the purchase of goods and services, and the procurement of construction contracts for all City departments, except for the procurement of infrastructure construction contracts and professional services required by Utilities and Infrastructure Services. Infrastructure construction contracts and professional services will be coordinated through the Supply Chain Management department.

Supply Chain Management is the City's link to the vendor community on all matters related to the procurement of goods, services and construction.

Supply Chain Management shall prepare, or assist with the preparation of, all bid documents, related reports and recommendations for consideration, approval or award by the CAO, or designate, and/or Common Council on all procurement related matters.

The City will consider other leading sustainability practices and may incorporate these emerging strategies into the City's policies where it is deemed to be appropriate and aligns with the City's strategic objectives.

Supply Chain Management oversight and support services include, but are not limited to:

1. deploying procurement strategies and tactics which ensure value for money in all transactions;

2. determining the procurement method which is most appropriate for the market conditions and facilitating the competitive bid processes and procedures;
3. ensuring supplier performance is meeting or exceeding the City's expectations;
4. compliance with all specifications for all acquisitions;
5. processing all contracts as per the signing authorities for contracts;
6. considering environmental, economic and strategic values when making recommendations or decisions;
7. supporting other departments with policy compliance and best practices;
8. providing professional procurement advice and services, including the recommendations on type of bid solicitation method;
9. monitoring compliance with this policy, the Procurement Procedures Manual and any applicable legislation and trade agreements;
10. notifying Commissioners or Directors, of non-compliance with this policy, the Procurement Procedures Manual and applicable legislation and trade agreements; and
11. notifying the CAO and/or Common Council of non-compliance.

Commissioners are responsible for procurement activities within their departments and divisions and are accountable for achieving the specific objectives of the procurement policy.

#### **1.4.1 Requirement for Approved Funds**

With respect to subsection 2.3.2 the authority to award a Contract is subject to the identification and availability of sufficient funds in appropriate accounts within the Budget(s).

Where goods and services are routinely purchased or leased on a multi-year basis, the authority to award a Contract is subject to all of the following conditions:

1. the identification and availability of sufficient funds in appropriate accounts for the current year within the Budget(s).
2. the requirement for the goods or services will continue to exist in subsequent years and, in the opinion of the Chief Financial Officer, the required funding can reasonably be expected to be made available, and
3. the Contract has a provision in it that the supply of goods or services in subsequent years is subject to the approval by Common Council of the Budget estimates to meet the proposed expenditures.

#### **1.4.2 Acquisitions Outside of Approved Budget**

Where a requirement exists to initiate a project for which Deliverables are required and funds are not contained in appropriate accounts within Common Council approved Budget(s) to meet the proposed expenditure, the Commissioner shall, prior to the commencement of the purchasing process, submit a report, through the CAO, to Common Council containing:

1. information surrounding the requirement to contract;
2. the terms and conditions of the proposed Contract; and
3. information on the availability of the funds within existing Budget(s), which were originally approved by Common Council for other purposes or on the requirement for additional funds.

### **1.5 Common Council Approved Contracts**

Notwithstanding any other provision of this policy, the following shall be subject to Common Council approval:

1. any Contract prescribed by legislation to be made by Common Council;
2. where the Bid price is higher than the approved Budget(s) and the necessary adjustments cannot be made;
3. where authority to approve has not been expressly delegated; and
4. where a Contract is a result of a public private partnership (“P3”) opportunity.

### **1.6 Prohibitions**

The following activities are prohibited:

1. the division of contracts, purchases, or changes to the scope of work to avoid the requirements of this policy.
2. the award or approval of a Contract without the appropriate authority to do so;
3. purchase by the City of any goods or services for personal use by or on behalf of any member of Common Council, appointed officers, employees of the City or their immediate families unless specifically authorized by Common Council;
4. purchase by the City from any member of Common Council, appointed officers, employees of the City or their immediate families or from any other source that could result in a conflict of interest;
5. the use of personal credit cards for City purchases where a City Purchasing Card is available;
6. making commitments to other parties or acquiring items through a Contract which extends beyond approved funding availability;
7. the award of a Contract where Supply Chain Management has determined that the provisions of this policy have not been adhered to and has so advised the person responsible for the procurement;
8. any transaction which could result in the creation of an employee - employer relationship.

## SECTION 2 – INTERPRETATION AND APPLICATION

### 2.1 Defined Terms

Terms used in this policy are defined in the following Glossary of Terms:

#### GLOSSARY OF TERMS

insert head of organization, CAO definition.

“**Bid**” means a submission in response to a Solicitation Document, and includes tenders, proposals, quotations, or other responses.

“**Bidder**” means a Supplier that submits a Bid, and includes proponents and respondents.

“**Budget(s)**” means a Common Council approved annual General Fund Operating and Capital Budgets and Saint John Water Operating and Capital Budgets, including authorized revisions.

“**CAO**” means the Chief Administrative Officer of the City of Saint John, New Brunswick.

“**City**” means the City of Saint John, New Brunswick.

“**Common Council**” means the City of Saint John Common Council.

“**Competitive Process**” means the solicitation of Bids from multiple Suppliers.

“**Contract**” means a commitment by the City for the Procurement of Deliverables from a Supplier, which may be evidenced by an agreement executed by the Supplier and the City, or a Purchase Order issued by the City to the Supplier.

“**Contract Administrator**” means an employee assigned to the management of a Contract.

“**Deliverables**” means any goods, services, or construction, or combination thereof.

“**Invitational Competition**” means a Competitive Process in which an invitation to submit Bids is issued to at least three Suppliers.

“**Legal Services**” means the City’s legal advisors.

“**Low-Value Procurement**” means any Procurement of Deliverables with a value below the Low-Value Procurement Threshold set out in the Procurement Policy, except where the Procurement is made through an existing Standing Offer or Qualified Supplier Roster.



**“Low-Value Procurement Threshold”** means the maximum value for a Procurement of Deliverables that the City may procure without proceeding with an Open Competition.

**“Master Framework Agreement”** means a master agreement entered into between the City and the prequalified Suppliers that have been included on a Qualified Supplier Roster.

**“Non-Standard Procurement”** means the acquisition of Deliverables through a process or method other than the standard method required for the type and value of the Deliverables. Non-standard Procurement methods include:

- (a) acquiring Deliverables directly from a particular Supplier without conducting a Competitive Process when an Invitational Competition or an Open Competition would normally be required; and
- (b) soliciting Bids from a limited number of Suppliers without conducting an open prequalification process when an Open Competition would normally be required.

**“Open Competition”** means the solicitation of Bids through a publicly posted Solicitation Document.

**“Open Competition Threshold”** means the minimum value for a Procurement of that the City must procure using an Open Competition as prescribed by applicable Acts and Trade Treaties.

**“Open Framework Competition”** means the Competitive Process used to establish a Qualified Supplier Roster and provide for an ongoing application process during the term of the Qualified Supplier Roster.

**“Performance Evaluation Report”** means a report evaluating a Supplier’s performance.

**“Procurement”** means the acquisition of Deliverables by purchase, rental, or lease.

**“Procurement Manager”** means the individual officer or employee who is responsible for Supply Chain Management.

**“Procurement Method”** means the bid solicitation format and includes but is not limited to:

- Request for Quotations (RFQ)
- Request for Proposals (RFP)
- Negotiated Request for Proposals (NRFP)
- Invitation to Tender (ITT)

**“Procurement Oversight Committee” (“POC”)** means the committee established by the City under the Procurement Policy for the purposes of considering and making determinations on procurement-related matters.

**“Procurement Plan”** means the plan developed by a Service Area at the outset of an Invitational Competition or Open Competition.

**“Procurement Procedures Manual”** means the compilation of specific details pertaining to various procurement processes.

**“Procurement Value”** means the maximum total value of the Deliverables being procured, and it must include all costs to the City, including, as applicable, acquisition, maintenance, replacement, and disposal; training, delivery, and installation; and extension options, less applicable rebates or discounts and exclusive of sales taxes.

**“Purchase Order”** means the City’s written document issued by a duly authorized employee of the City to a Supplier formalizing all the terms and conditions of the purchase and supply of the Deliverables identified on the face of the Purchase Order.

**“Purchasing Card”** means a credit card provided by the City to authorized officers and employees for use as a payment method to purchase directly from Suppliers where permitted under the Procurement Policy and in accordance with any cardholder agreement and applicable procedures.

**“Qualified Supplier Roster”** means a list of Suppliers that have participated in and successfully met the requirements of a Request for Supplier Qualifications (“RFSQ”) and have therefore been prequalified to perform discrete work assignments involving the delivery of a particular type of deliverable. The Suppliers that qualify for inclusion on the Qualified Supplier Roster will enter into a Master Framework Agreement and will be eligible to participate in Roster Competitions, as and when the goods or services are required.

**“Request for Information”** or **“RFI”** means a market research initiative for the collection of data for the purposes of future Procurement planning.

**“Roster Competition”** means an expedited, invitational competition between Suppliers that have been included on a Qualified Supplier Roster for the selection of a Supplier to perform a discrete work assignment during the term of the roster.

**“Service Area”** means the branch, department, division, or unit of the City that is requisitioning the purchase of the Deliverables.

**“Service Area Head”** means an individual officer or employee who is responsible for a specific Service Area.

**“Service Area Lead”** means the Service Area employee assigned primary responsibility for a procurement.

**“Social Value”** means a procurement outcome which has a positive impact on inclusive employment practices, small to medium-sized businesses, supplier diversity, workforce development and environmental stewardship.

**“Solicitation Document”** means the document issued by the City to solicit Bids from Bidders.

**“Standing Offer”** means a written offer from a pre-approved Supplier to supply Deliverables to the City, upon request, through the use of an ordering process during a particular period of time, at a predetermined price or discount, generally within a predefined dollar limit. The Standing Offer does not create a contractual commitment from either party for a defined volume of business. The commitment to

purchase against a Standing Offer is formed at the time a specific order is placed through the issuance of a Purchase Order to the Supplier.

“**Supplier**” means a person carrying on the business of providing Deliverables.

“**Supply Chain Management**” means the branch, department, division, or unit responsible for purchasing Deliverables for the City.

## 2.2 Application

This policy applies to the Procurement of all Deliverables with the exception of the exclusions set out below:

### SCHEDULE OF EXCLUSIONS

#### 2.2.1. Excluded Acquisitions and Expenditures

This policy does not apply to:

- (a) Contracts or agreements for the sale, purchase, lease, or licence of land or existing buildings.
- (b) the acquisition of the following Deliverables:
  - i. services of expert witnesses or factual witnesses used in court of legal proceedings;
  - ii. goods intended for resale to the public;
  - iii. goods purchased on a commodity market;
  - iv. works of art; and
  - v. subscriptions to newspapers, magazines, or other periodicals.
- (c) Contracts or agreements relating to hiring of employees or employee compensation or reimbursement of employee expenses.

Procurement includes the acquisition of Deliverables by purchase, rental, or lease.

#### 2.3.1 Spending and Approval Authorities

Spending and approval authorities are as follows (excluding tax):

Title	Approved Operating Budget Amount	Approved Capital Budget Amount
Common Council	Greater than \$150,000	Greater than \$500,000

Chief Administrative Officer	\$150,000 or less	\$500,000 or less
Commissioners	\$100,000 or less	\$100,000 or less
Directors	\$25,000 or less	\$25,000 or less
Line Manager	\$15,000 or less	\$15,000 or less
Foreman, Supervisor, Admin or Designate	\$7,500 or less	\$7,500 or less

**2.3.2 Contract Award Authority Delegation**

Pursuant to By-law No. LG-21, a “By-law Respecting Delegation of Authority to Award or Approve Contracts”, Council delegated its authority to approve or award contracts to its CAO, Commissioners and Directors within the spending limits authorized under this policy and subject to compliance with any other applicable terms and conditions of this policy.

**2.4 Low Value Procurement Threshold**

As referred to in this policy, the Low Value Procurement Threshold is set at \$15,000 plus taxes.

**2.5 Emergency Purchases**

Notwithstanding any other provisions of this policy, where an emergency exists and prior approval of the Procurement Manager cannot be obtained, a Service Area Head, or their designate, may authorize any officer or employee to acquire required Deliverables in an expedited manner.

If the expenditure is not within the approved budget envelope and/or the amount of the purchase exceeds the spending and approval authorities set out in this policy the Service Area Head must provide a report to Common Council providing the relevant details surrounding the application of this section.

For the purposes of this policy, an emergency exists when an unforeseeable situation or event occurs that is a threat to any of the following:

- (a) public health and/or safety;
- (b) the maintenance of essential services; or
- (c) the welfare of persons or public property;

Situations of urgency resulting from the failure to properly plan for a Procurement do not constitute an emergency. When using this section, the Service Area Head, or their delegate, shall ensure that a formal contract (when necessary) and other required procurement records are created prior to the acquisition of the goods or services, or, where not feasible in cases of extreme urgency, as soon thereafter as is reasonably possible. For greater certainty, Section 3 – Ethical Conduct and Conflict of Interest shall apply to emergency purchases and Conflicts of Interest must be avoided in relation to all purchases including emergency purchases.

## **2.6 Related Documents**

The following documents are to be read in conjunction with this policy:

1. The City of Saint John Procurement Procedures Manual under the Procurement Policy
2. The City of Saint John Procurement Card Policy
3. The New Brunswick Procurement Act and Regulation 2014-93
4. The Agreement on the Opening of Public Procurement for New Brunswick and Quebec
5. The Canadian Free Trade Agreement
6. The Canada-European Union Comprehensive Economic and Trade Agreement

## **SECTION 3 – ETHICAL CONDUCT AND CONFLICTS OF INTEREST**

### **3.1 Conduct and Conflicts of Interest**

For the purposes of this section, “Conflict of Interest” includes:

- (a) when applied to the activities of the City and its consultants and service providers: (i) a conflict between one’s private interests and one’s public, fiduciary, or contractual duties in relation to any procurement activity; or (ii) engaging in any conduct that may give another party an unfair advantage in a procurement process; or
- (b) in relation to a bidding process, a Bidder has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including, but not limited to: (i) having, or having access to, confidential information of the City in the preparation of its Bid that is not available to other Bidders; (ii) having been involved in the development of the Solicitation Document, including having provided advice or assistance in the development of the Solicitation Document; (iii) receiving advice or assistance in the preparation of its response from any individual or entity that was involved in the development of the Solicitation Document; (iv) communicating with any person with a view to influencing preferred treatment in the bidding process (including, but not limited to, the lobbying of decision-makers involved in the bidding process); or (v) engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive bidding process or render that process non-competitive or unfair; or

- (c) in relation to the performance of its contractual obligations, a Supplier's other commitments, relationships, or financial interests: (i) could, or could be seen to, exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgement; or (ii) could, or could be seen to, compromise, impair, or be incompatible with the effective performance of its contractual obligations.

The City's Procurement activities must be conducted with integrity, and all individuals involved in the City's Procurement activities must act in a manner that is consistent with the principles and objectives of this policy and avoid any Conflict of Interest.

All participants in a Procurement process, including any outside consultants or other service providers participating on behalf of the City, must declare any perceived, potential, or actual Conflicts of Interest and, must recuse themselves from participating in any manner in a Procurement Process to which the perceived, potential, or actual conflict of interest applies.

For greater clarity, it is the responsibility of all members of Common Council to disclose any perceived, potential or actual procurement-related conflict of interest and, when the conflict is raised by a member of Common Council, to address that conflict in accordance with the procedures established by Common Council.

### **3.2 Supplier Conduct and Conflicts of Interest**

The City requires its Suppliers to act with integrity and conduct business in an ethical manner.

All Suppliers participating in a Procurement process or providing Deliverables to the City must declare any perceived, potential, or actual conflicts of interest and must conduct themselves in accordance with the Supplier Code of Conduct set out below.

The City may refuse to do business with any Supplier that has engaged in illegal or unethical bidding practices, has an actual or potential conflict of interest or an unfair advantage, or fails to adhere to ethical business practices.

## SUPPLIER CODE OF CONDUCT

The City requires its Suppliers to act with integrity and conduct business in an ethical manner. The City may refuse to do business with any Supplier that has engaged in illegal or unethical bidding practices, has an actual or potential conflict of interest or an unfair advantage, or fails to adhere to ethical business practices.

Suppliers are responsible for ensuring that any employees, representatives, agents, or subcontractors acting on their behalf conduct themselves in accordance with this Supplier Code of Conduct. The City may require the immediate removal and replacement of any individual or entity acting on behalf of a Supplier that conducts themselves in a manner inconsistent with this Supplier Code of Conduct. The City may refuse to do business with any Supplier that is unwilling or unable to comply with such requirement.

### A. ILLEGAL OR UNETHICAL BIDDING PRACTICES

Illegal or unethical bidding practices include:

- (a) bid-rigging, price-fixing, bribery or collusion, or other behaviours or practices prohibited by federal or provincial statutes;
- (b) offering gifts or favours to the City's officers, employees, appointed or elected officials, or any other representative of the City;
- (c) engaging in any prohibited communications during a Procurement process;
- (d) submitting inaccurate or misleading information in a Procurement process; and
- (e) engaging in any other activity that compromises the City's ability to run a fair Procurement process.

The City will report any suspected cases of collusion, bid-rigging, or other offences under the *Competition Act* to the Competition Bureau or to other relevant authorities.

### B. CONFLICTS OF INTEREST

All Suppliers participating in a Procurement process must declare any perceived, potential, or actual conflicts of interest.

The term "conflict of interest," when applied to Suppliers, includes any situation or circumstance where:

- (a) in the context of a Procurement process, the Supplier has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to:

- i. having, or having access to, confidential information of the City that is not available to other Suppliers;
- ii. having been involved in the development of the Procurement document, including having provided advice or assistance in the development of the Procurement document;
- iii. receiving advice or assistance in the preparation of its response from any individual or entity that was involved in the development of the Procurement document;
- iv. communicating with any person with a view to influencing preferred treatment in the Procurement process (including but not limited to the lobbying of decision-makers involved in the Procurement process); or
- v. engaging in conduct that compromises, or could be seen to compromise, the integrity of an open and competitive Procurement process or render that process non-competitive or unfair; or

(b) in the context of performance under a potential Contract, the Supplier's other commitments, relationships, or financial interests:

- i. could, or could be seen to, exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgment; or
- ii. could, or could be seen to, compromise, impair, or be incompatible with the effective performance of its contractual obligations.

Where a Supplier is retained to participate in the development of a Solicitation Document or the specifications for inclusion in a Solicitation Document, that Supplier will not be allowed to respond, directly or indirectly, to that Solicitation Document.

### **C. ETHICAL BUSINESS PRACTICES**

In providing Deliverables to the City, Suppliers are expected to adhere to ethical business practices, including:

- (a) performing all Contracts in a professional and competent manner and in accordance with the terms and conditions of the Contract and the duty of honest performance;
- (b) complying with all applicable laws, including safety and labour codes (both domestic and international as may be applicable); and
- (c) providing workplaces that are free from harassment and discrimination.



## **SECTION 4 – ROLES AND RESPONSIBILITIES**

### **4.1 Role and Responsibilities of Common Council**

It is the role of Common Council to establish policy and approve expenditures through the City's budget-approval process. Through this policy, Common Council delegates to the City's officers and employees the authority to incur expenditures in accordance with approved budgets through the Procurement of Deliverables in accordance with the rules and processes set out in this policy. Common Council may provide strategic direction and guidance on major projects prior to the commencement of the Procurement process; however, Common Council will not generally be involved in the day-to-day Procurement operations or individual Procurement processes, except to the extent that the approval of Common Council is required under this policy or in the event that an exception to this policy is required.

### **4.2 Roles and Responsibilities of Officers and Employees**

Specific responsibilities pertaining to all stages of a Procurement process, from the initial identification of requirements through to the management of Contracts with Suppliers, are detailed in this policy. In addition to those specific responsibilities, the general roles and responsibilities delegated to the City's officers and employees are set out below.

#### **4.2.1 Procurement Manager**

It is the role of Supply Chain Management to lead the City's Procurement operations. In fulfilling this role, the Procurement Manager, or designate, is responsible for:

- (a) ensuring the consistent application of this policy and the provision of Procurement services to the Service Areas efficiently and diligently;
- (b) in collaboration with Service Areas, developing an annual procurement plan to help facilitate proactive procurement planning across the organization and to help identify major projects requiring the creation of project-specific oversight steering committees;
- (c) developing Procurement strategies and continually analyzing business requirements and spending patterns to identify opportunities for more strategic sourcing, including the creation of new Qualified Supplier Rosters to consolidate purchasing opportunities and to reduce instances of emergency procurements and Non-Standard Procurements;
- (d) monitoring and reporting non-compliance and conflicts of interest in accordance with this policy;
- (e) researching, developing, maintaining, updating, and communicating Procurement procedures, and templates;
- (f) addressing any issues or concerns that arise in respect of a Procurement process and seeking guidance, support, and advice of Legal Services, as required; and

- (g) developing an annual procurement training plan for the organization and providing appropriate orientation, training, and tools to employees involved in Procurement activities.

#### **4.2.2 Service Area Heads**

It is the role of the Service Areas to ensure that their requirements for Deliverables are met in accordance with the principles and objectives of this policy. In fulfilling this role, Service Area Heads are responsible for ensuring that their Service Area complies with this policy, encouraging sound Procurement practices and ensuring the provision of appropriate education and training to employees involved in Procurement activities.

Service Area Heads will be held accountable for any decision to proceed with a Procurement process or transaction that is not conducted in accordance with this policy or does not have the approval of Supply Chain Management.

#### **4.2.3 Service Area Employees**

Employees of all Service Areas are responsible for complying with this policy. Service Area employees involved in Procurement activities must understand their obligations and responsibilities under this policy, and they should consult with Supply Chain Management in respect of any questions regarding the application or interpretation of this policy or adhering to any established procurement procedures.

#### **4.2.4 Supply Chain Management Employees**

Employees of Supply Chain Management are responsible for complying with this policy and ensuring this policy is applied consistently. Supply Chain Management employees must understand their obligations and responsibilities under this policy, and they should consult with the Procurement Manager in respect of any questions regarding their application or interpretation.

#### **4.2.5 Legal Services**

It is the role of Legal Services to provide legal advice and assistance on the City's Procurement activities and its relationships with Suppliers. In fulfilling this role, Legal Services is responsible for:

- (a) advising the Procurement Manager as required on legal issues arising from Procurement activities and reviewing and approving specific Solicitation Documents and related documentation referred for legal review by the Procurement Manager;
- (b) providing advice on the finalization of Contracts and agreements and reviewing and advising on proposed changes to the City's standard terms and conditions, legal agreements, and Solicitation Document templates; and
- (c) providing legal advice and counsel to the City in the event of a Contract dispute or legal challenge flowing from a Procurement process.

### **4.3 Procurement Oversight Committee**

The CAO may establish a Procurement Oversight Committee (“POC”) for the purpose of:

- (a) making determinations relating to Conflict of Interest; (ii) Non-Standard Procurement; (iii) bid protests; and (iv) supplier suspension;
- (b) providing oversight as the steering committee for all Open Competitions, unless a project-specific oversight steering committee is created for a specific procurement;
- (c) monitoring and reporting non-compliance with this policy; and
- (d) providing input on other Procurement matters that may be referred to it by the Procurement Manager.

The POC will include the Procurement Manager and at least two other senior-level officers or employees of the City and will also include the Service Area Head responsible for the specific Procurement in question. Legal Services will provide guidance and advice to the POC, as required.

For greater clarity, if the CAO does not establish a POC, reference in this policy to POC shall be interpreted to mean CAO.

## **SECTION 5 – ESTABLISHMENT OF SUPPLY ARRANGEMENTS**

### **5.1 Recurring Requirements**

Before initiating a procurement, Service Areas must consider the availability of existing supply arrangements. If the Deliverables will be required on a frequent or regularly recurring basis, and there is no existing supply arrangement, the Service Area must consult with Supply Chain Management about the possibility of establishing a Standing Offer or Qualified Supplier Roster.

### **5.2 Standing Offers**

Standing Offers may be established for standardized Deliverables to be purchased by all Service Areas, where:

- (a) the requirements for Deliverables are recurring and predictable over an extended period of time;
- (b) the requirements are standard and clearly defined at the time of establishment of the Standing Offer; and
- (c) it is possible to fix pricing for the Deliverables for the duration of the Standing Offer.

The establishment of a Standing Offer does not create a contractual commitment to procure Deliverables from the Supplier. The commitment to purchase against a Standing Offer is formed at the time a specific order is placed through the issuance of a Purchase Order to the Supplier.

The Procurement Manager is authorized to establish Standing Offers through Invitational and Open Competitions as required. The competitions will be managed by Supply Chain Management, with the co-operation and involvement of subject-matter experts from the relevant Service Area(s). If multiple Standing Offers are established for the same goods or services, clear ranking methodologies and call-up procedures must be specified.

### **5.3 Qualified Supplier Rosters**

Qualified Supplier Rosters may be established to prequalify Suppliers that will be eligible to compete for discrete work assignments involving the delivery of a particular type of Deliverables, as and when required.

The establishment of a Qualified Supplier Roster does not create a contractual commitment to procure Deliverables from any of the Suppliers. When Deliverables are required, a Roster Competition will be conducted for the purposes awarding a contract to one of the qualified Suppliers.

The Procurement Manager is authorized to conduct Open Framework Competitions to establish Qualified Supplier Rosters. The Open Framework Competition will be managed by Supply Chain Management, with the co-operation and involvement of the Service Area(s).

### **5.4 Co-operative Purchasing**

The City may participate in co-operative or joint purchasing initiatives with other entities where such initiatives are determined to be in the best interests of the City. If the City participates in such co-operative or joint purchasing initiatives, the City may adhere to the policies of the entity conducting the purchasing process, provided that such policies comply in spirit with this policy and with generally applicable legal requirements. If the City is leading a co-operative or joint purchasing initiative, this policy will be followed.

## **SECTION 6 – PROCUREMENT OF DELIVERABLES**

### **6.1 Procurement Planning**

Effective Procurement planning is essential to ensuring an effective result and to limiting risk to the City. Service Areas must ensure that they leave sufficient time to plan for a procurement, including time for:

- (a) developing proper specifications and business requirements;
- (b) obtaining internal reviews;
- (c) conducting a Competitive Process, as required; and

(d) obtaining necessary approvals.

## **6.2 Market Research**

Where the Service Area is uncertain about the Deliverables required or where there is insufficient internal knowledge about the market, the Service Area must consult with Supply Chain Management about the feasibility of conducting a Request for Information (“RFI”) process. If it is determined that an RFI is needed, that RFI process must be openly posted in order to gather market research from prospective Bidders. It must not be used as a prequalification tool.

## **6.3 Procurement Value**

It is important to accurately estimate the value of the Procurement to determine the appropriate Procurement method and ensure compliance with the requirements of this policy.

## **6.4 Contract-Splitting**

Subdividing, splitting or otherwise structuring Procurement requirements or contracts in order to reduce the value of the Procurement or in any way circumvent the requirements or intent of this policy is not permitted.

## **6.5 Initiating Procurement**

Unless specifically permitted under this policy, Service Areas are not permitted to procure Deliverables or engage with potential Suppliers regarding the Procurement of Deliverables without the involvement of Supply Chain Management.

## **6.6 Procurement Authorization**

Before any Procurement process begins, proper authorization of the Procurement and delegation of authority to procure must be obtained in accordance with 2.3.1.

## **6.7 Standard Procurement Methods**

Depending on the nature, value, and circumstances of the procurement, the City may procure Deliverables through the following standard Procurement methods. The various thresholds for the different methods of procurement shall be as established and maintained by the POC.

### **6.7.1 Existing Supply Arrangement**

#### **6.7.1.1 Ordering from Standing Offer**

When a Standing Offer is available, its use is mandatory for all Service Areas. To purchase from the Standing Offer, the Service Area must submit an authorized requisition to Supply Chain Management. A purchase order referring to the Standing Offer details should be created and sent to the Supplier. The

Purchase Order referencing the Standing Offer and reflecting the pre-negotiated prices and terms and conditions of the Standing Offer will be created and issued to the Supplier by the Procurement Manager.

#### **6.7.1.2 Roster Competition**

If the Deliverables are available under an existing Qualified Supplier Roster, they must be acquired through a Roster Competition.

Roster Competitions will be managed by Supply Chain Management, with the co-operation and involvement of the Service Area.

#### **6.7.2 Low-Value Procurement**

Where the Procurement Value is below the Low-Value Procurement Threshold and the Deliverables are not covered under an existing Standing Offer or Qualified Supplier Roster, Service Areas may make Low-Value Procurements without the involvement of Supply Chain Management.

It is the responsibility of the Service Area to determine if there is an existing Standing Offer or Qualified Supplier Roster for the required Deliverables before making a purchase. When available, the Deliverables must be purchased in accordance with the terms of the Standing Offer

For Low-Value Procurements, the Service Area is only required to obtain one quote and may acquire the Deliverables using a corporate purchasing card or by submitting a requisition to the Procurement Manager.

Where practical, departments are encouraged to obtain multiple quotes to ensure they are obtaining best value. Quotes may be obtained through advertisements or Supplier catalogues or by contacting the potential Supplier(s) by telephone or email.

The Service Area Head is responsible and accountable for Low-Value Procurements and may authorize specific individuals within the Service Area to make Low-Value Procurements and may assign specific spending authority limits.

If a Service Area anticipates making multiple Low-Value Procurements of the same Deliverables and the total value of those purchases may exceed the applicable Low-Value Procurement Threshold, the department must contact Supply Chain Management to discuss the possibility of setting up a Standing Offer or Qualified Supplier Roster or consolidating the Procurement to avoid contract splitting.

Supply Chain Management is available to assist Service Areas with Low-Value Procurements, and Service Areas may request that Supply Chain Management conduct an Invitational Competition for any Low-Value Procurement.

#### **6.7.3 Invitational Competition**

An Invitational Competition, in which Bids are solicited from a minimum of three Suppliers, is the standard method of Procurement when the Procurement Value is between the Low-Value Procurement Threshold and the Open Competition Threshold.

Invitational Competitions will be managed by Supply Chain Management, with the co-operation and involvement of the Service Area.

Open Competition may be conducted in lieu of an Invitational Competition, where the Procurement Manager, in consultation with the Service Area, determines that it would be in the City's best interest.

#### **6.7.4 Open Competition**

An Open Competition, in which Bids are solicited from all interested Suppliers through a publicly posted Solicitation Document, is the standard method of Procurement when the Procurement Value equals or exceeds the Open Competition Thresholds.

Open Competitions may include two-stage Procurement processes in which a prequalification process is conducted by soliciting and evaluating submissions from all interested Suppliers in order to establish a short list of prequalified Suppliers that will be eligible to submit a Bid in response to a second-stage Solicitation Document. A two-stage Procurement process may be used whenever determined appropriate by the Procurement Manager, in consultation with the Service Area.

Open Competitions will be managed by Supply Chain Management, with the co-operation and involvement of the Service Area.

#### **6.8 Non-Standard Procurement**

Non-Standard Procurement means the acquisition of Deliverables through a method other than the standard method for the type and value of the Deliverables, as set out above under Section 6.7. Details pertaining to Non-Standard Procurements can be found in the Procurement Policy Manual.

Non-standard Procurement methods include:

- (a) acquiring Deliverables directly from a particular Supplier without conducting a Competitive Process when an Invitational Competition or an Open Competition would normally be required, including but not limited to emergency purchases; and
- (b) soliciting Bids from a limited number of Suppliers without conducting an open prequalification process when an Open Competition would normally be required.

Under no circumstances will a Non-Standard Procurement be used for the purpose of avoiding competition among Suppliers or in a manner that discriminates against, or advantages Suppliers based on geographic location. For greater certainty:

- (a) the Service Area Head will remain responsible for ensuring Open Competition, or at minimum, Invitational Competition, whenever feasible even in circumstances where direct awards would otherwise be recognized under the applicable trade treaties; and
- (b) the Conflict of Interest rules will apply to all Non-Standard Procurements.

## **6.9 Contract Award and Finalization**

Contracts must be awarded in accordance with this policy.

A Contract may be entered into through the execution of a legal agreement and/or the issuance of a Purchase Order evidencing the contract. The Contract must be entered into prior to the delivery or provision of the Deliverables.

The Procurement Manager has delegated authority to issue Purchase Orders on behalf of the City. Agreements must be signed by the Mayor and Common Clerk.

No Contract may be entered into, either through the issuance of a Purchase Order or the execution of an agreement, unless:

- (a) approved funding in an amount sufficient to cover the Procurement Value is available;
- (b) the Procurement process was conducted in accordance with this policy; and
- (c) all required authorizations have been obtained.

## **SECTION 7 – SOCIAL PROCUREMENT**

### **7.1 Social Procurement Values**

Where possible and practicable, to achieve best value for taxpayer dollars, the acquisition of Deliverables may include the following values and criteria when planning for and sourcing its requirements:

1. Sourcing of environmentally and ecologically responsible products and equipment, leveraging low carbon options;
2. Respect for the values of inclusivity, diversity, equity, culture, and fair labour practices;
3. Support of diverse organizations or organizations that have a social impact

The criteria and process will be outlined in the Procurement Procedures Manual to assist in the proper execution of these values.

### **7.2 Social Procurement Above the Open Competition Threshold**

Any social procurement objective above the applicable Open Competition Thresholds must be supported by a plan approved by Common Council prior to its implementation that confirms, among other things:

1. the jurisdictional basis for the City to implement the objective under authority delegated by the provincial government;



2. the trade-treaty authority for the City to implement the objective under programs established by the federal or provincial government based on the powers granted to those senior levels of government under the trade treaties;
3. the public policy rationale supporting the objective, including a clear definition of measurable outcomes that the objective is intended to achieve; and
4. operational details for the implementation of the objective in the form of evaluation and award criteria and contract performance requirements that ensure the transparency and defensibility of evaluation and award decisions and contract administration practices in compliance with existing public procurement standards.

### **7.3 Social Procurement Below the Open Competition Threshold**

A Service Area may implement social procurement objectives for Contracts valued below the applicable Open Competition Thresholds as a pilot project and shall report the results of that pilot project to Common Council within a year of its implementation. For greater clarity, any below-threshold Contracts that include social procurement objectives will remain subject to the provisions of this policy, including but not limited to Section 3 – Ethical Conduct and Conflict of Interest, and any such pilot project shall at minimum address factor number four identified in the prior paragraph and shall be approved by the POC before being implemented by the Service Area.

## **SECTION 8 – SUPPLIER RELATIONS AND CONTRACT MANAGEMENT**

### **8.1 Debriefings**

Where the City has conducted an Open Competition, the City shall provide a debriefing to all unsuccessful Suppliers upon request.

### **8.2 Procurement Protests**

Suppliers may formally protest the outcome of a Procurement process. Procurement protests must be managed and responded to in accordance with directions provided by the POC.

### **8.3 Contract Management**

All contracts for Deliverables must be managed by the Service Area. Master Framework Agreements will be managed by Supply Chain Management.

### **8.4 Contract Extensions or Amendments**

Contract extensions and amendments must not be used to expand a Contract beyond what was contemplated under the terms of the Contract and the original Procurement process or to circumvent the need to procure additional Deliverables through a Competitive Process in accordance with this policy.

During the course of a contract, additional work may arise that could not be anticipated during the project planning process. Contract amendments for adjustments to the scope of the Contract may be approved if the adjustment is for work that is directly connected or incidental to the original Contract scope.

The expansion or extension of a Contract to procure Deliverables that were not contemplated in the original Procurement is a Non-Standard Procurement and, if the total cumulative value of the additional Deliverables equals or exceeds the Open Competition Threshold, the Non-Standard Procurement must be approved by the POC. Where a Contract is amended or extended more than once, the total cumulative value of the additional Deliverables includes the value of all previously approved amendments and extensions and the value of the proposed amendment or extension.

If a Contract amendment results in a net increase to the Contract value previously approved, the amendment must be approved in accordance with 2.3.1.

All amendments to an existing Contract must be appropriately documented. Legal Services should be consulted regarding all matters pertaining to Contract interpretation and application, and for any changes, extensions, renewals, or amendments required to be made to any executed contract.

## **8.5 Contract Disputes**

All potential Contract disputes with Suppliers must be managed in accordance with the dispute resolution mechanisms outlined in the contract. Where a Contract is silent on dispute resolution, the Service Area should ensure that potential disputes are proactively managed and appropriately escalated. Written copies of all communications and correspondence with Suppliers concerning a Contract dispute must be maintained by the Service Area. A Contract can be terminated prior to its expiry date only with the involvement of Legal Services.

## **8.6 Supplier Performance**

The performance of a Supplier under Contract must be monitored and tracked by the Service Area. Details pertaining to managing supplier performance can be found in the Procurement Policy Manual.

## **8.7 Supplier Suspension**

Suppliers can be suspended from participating in future Procurement processes based on determinations made by the POC and as allowed for by the New Brunswick Procurement Act and Regulation 2014-93.

# **SECTION 9 – PROCUREMENT RECORD-KEEPING**

## **9.1 Supplier Information**

The City must ensure that Supplier information submitted in confidence in connection with a Procurement process or Contract is adequately protected. Supply Chain Management and the Service Areas must

ensure that all Bids and contracts are kept in a secure location and are only accessible by those individuals directly involved with the Procurement or management of the contract.

## **9.2 Procurement Records**

The maintenance, release, and management of all Procurement records must be in accordance with the City's policies and procedures on document management and access to information.

Supply Chain Management is responsible for ensuring that all documentation relating to a Procurement is properly filed and maintained in a Procurement project file. Documentation and reports regarding Procurement processes and Contract awards (including Non-Standard Procurements) and data necessary to trace the process conducted electronically must be maintained for a minimum period of at least seven years from the Contract award date, or such longer period as may be required under the City's document management policies.

# **SECTION 10 – COMPLIANCE MONITORING AND REPORTING**

## **10.1 Compliance Monitoring**

Non-compliance with this policy may expose the City to the risk of Supplier complaints, reputational damage, Bid disputes, and legal challenges, and may compromise the integrity, fairness, openness, and transparency of the process.

The Procurement Manager is responsible for monitoring compliance across the organization. Based on the results of compliance monitoring, reports outlining instances of non-compliance may be issued by the Procurement Manager to the relevant Service Area Head. The Service Area Head must address the identified compliance concerns and submit a written confirmation of actions taken to the Procurement Manager. Ongoing concerns with respect to compliance will be subject to internal audit and to the additional reporting requirements outlined herein.

### **10.1.1 Non-Compliance Defined**

For the purposes of this section, non-compliance includes:

- (a) a breach of any purchasing card policies and procedures;
- (b) a breach of any codes of conduct involving a Procurement;
- (c) executing a purchase of any kind, including a new purchase, a purchase made through a contract amendment, or a purchase made under an expired contract, without first obtaining the necessary funding authorization and other applicable approvals;
- (d) commencing performance of a contract prior to the formal approval and execution of that contract;

- (e) directly awarding a contract, or engaging in restrictive tendering, in instances where Open Competition is required, without first obtaining formal approvals for any such exception to Open Competition practices;
- (f) obtaining procurement approvals based on inaccurate or incomplete information or based on material misrepresentations or omissions;
- (g) failing to adhere to requirements of the procurement policy, including non-compliance relating to conflict of interest, proper advanced planning, contract splitting, sole sourcing, and recordkeeping; or
- (h) failing to adhere to the due process standards applicable to the government tendering process, including standards relating to transparency, procedural fairness, non-discrimination, and the protection of confidential supplier information.

#### **10.1.2 Duty to Report and Rectify**

Service Area Heads are required to observe and address non-compliance with this policy within their Service Areas. Where instances of non-compliance are identified, the Service Area Head is expected to notify the Procurement Manager and obtain advice: (a) with respect to mitigating potential risks to the City arising from the non-compliance; and (b) to ensure future non-compliance is avoided.

The Procurement Manager shall record all reported non-compliance to the Procurement Oversight Committee on a quarterly basis and shall, in consultation with that committee:

- (a) develop recommendations for rectification of any such non-compliance; and
- (b) provide a report to Common Council on an annual basis of any non-compliance issues not resolved or without a remediation plan in place.

#### **10.1.3 Procurement Oversight Committee**

Once established by the CAO, the Procurement Oversight Committee (“POC”) shall meet at minimum on a quarterly basis, and more frequently as required, to address non-compliance incidents and develop non-compliance remediation measures that may include, based on the severity of the breach:

- (a) the requirement that the individual(s) involved in the breach complete prescribed procurement remediation training;
- (b) the suspension of the individual(s) involved in the breach from any future procurement-related activities including the use of the purchasing cards or any other involvement in the procurement process;
- (c) additional disciplinary measures as may be appropriate based on consultation with Human Resources and Legal Services;

- (d) a report to law enforcement authorities where the breach in question is of a criminal or quasi-criminal nature, and, for greater certainty, such breaches may include but are not limited to potential breaches of the *Criminal Code* or *Competition Act*.

## **10.2 Audit**

All Procurement activities will be subject to audit as prescribed by the CAO.

## **10.3 Reporting**

The Procurement Manager will prepare and submit to Common Council an annual report summarizing the City's Procurement activities, including:

- (a) Non-standard Procurements;
- (b) instances of non-compliance as described above; and
- (c) procurements over \$100,000.

