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| 4. PURCHASING BY-LAW

RÈGLEMENT SUR LES ACHATS |
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COMMITTEE RECOMMENDATION

That Council approve the amendments to the *Purchasing By-law* as described in this report.

RECOMMANDATION DU COMITÉ

Que le Conseil municipal approuve les modifications au *Règlement sur les achats* comme le décrit le présent rapport.

DOCUMENTATION/DOCUMENTATION

1. Chief Procurement Officer's report, dated 26 September 2017 (ACS2017-CSD-CPO-0003)

Rapport du Chef de l'Approvisionnement, daté le 26 septembre 2017 (ACS2017-CSD-CPO-0003)

2. Extract of draft Minutes, Finance and Economic Development Committee, 3 October 2017

Extrait de l'ébauche du procès-verbal, Comité des finances et du développement économique, le 3 octobre 2017

**Report to
Rapport au:**

**Finance and Economic Development Committee
Comité des finances et du développement économique
3 October 2017 / 3 octobre 2017**

**and Council
et au Conseil
11 October 2017 / 11 octobre 2017**

**Submitted on September 26, 2017
Soumis le 26 septembre 2017**

**Submitted by
Soumis par:
Will McDonald, Chief Procurement Officer, Chef de l'Approvisionnement**

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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2017-CSD-CPO-0003

SUBJECT: Purchasing By-Law

OBJET: Règlement sur les achats

REPORT RECOMMENDATION

That the Finance and Economic Development Committee recommend that Council approve the amendments to the *Purchasing By-law* as described in this report.

RECOMMANDATION DU RAPPORT

Que le Comité des finances et du développement économique recommande que le Conseil municipal approuve les modifications au Règlement sur les achats comme le décrit le présent rapport.

BACKGROUND

Enacted pursuant to Section 270 of the *Municipal Act, 2001*, the City of Ottawa's Purchasing By-law provides guidelines in the procurement of goods, construction and services with the guiding principle that all purchases be made using a competitive process that is open, transparent and fair to suppliers. The City Clerk and Solicitor Department regularly undertakes a review of the Purchasing By-law (By-law No. 50 of 2000) as part of the governance review process and in conjunction with the various departments and portfolios to incorporate changes in administrative and operational practices. The last comprehensive review of this By-law was done in 2014.

In the course of the 2014-2018 Mid-term Governance Review approved by Council in November 2016, this By-law was also amended to provide that both the City Clerk and Solicitor and the Chief Procurement Officer, as appropriate, review and approve for execution agreements authorized under the By-law. The addition of the Chief Procurement Officer as one of the authorized staff, in addition to the City Clerk and Solicitor, to review and approve for execution agreements that are required and comply with the By-law was made to ensure consistency with the same authority that was already provided for in the Delegation of Authority By-law.

Under the 2014-2018 Mid-term Governance Review, the Delegation of Authority By-law was amended to reflect the municipal administration's organizational alignment in July 2016 from two broad portfolios, namely City Operations and Planning and Infrastructure, to nine departments plus the City Manager's Office and to include new delegation of authorities to staff.

DISCUSSION

This report follows upon the 2014-2018 Mid-term Governance Review amendments to the Delegation of Authority By-law (DoA By-law) to reflect the organizational realignment and distribution of authorities within the organization and proposes similar adjustments to the Purchasing By-law.

Staff has reviewed the Purchasing By-law for the needed administrative changes and has proposed amendments to the By-law to address the following:

- a) to bring the By-law into alignment with the DoA By-law, specifically as it pertains to the sub-delegation of purchasing authority;
- b) adjustment of references to key roles to reflect the new organizational alignment in 2016 with adjustment of existing authorities to General Managers and Supply Services to support streamlined and accountable decision-making; and
- c) to take the opportunity to update of the By-law name and terminology from “Purchasing By-Law” to “Procurement By-Law” to bring clarification of language and reflect adoption of best practices related to procurement.

In the preparation of these proposed amendments and development of this report, the Chief Procurement Officer consulted with operational staff and members of the Senior Leadership Team for all Departments. Feedback and considerations have been addressed in the recommendations.

The recommendations and rationale for the changes are summarized below along with the description of the proposed amendments as required.

Adjustments to Delegations of Authority under the Purchasing By-law

Amendments are proposed in order to adjust the distribution of delegations of authority between organizational levels under the Purchasing By-law. In order to align to the DoA By-law, the Purchasing By-law must be amended to allow for authorities to be further delegated to staff in writing. As well, the delegated authority previously held by the Deputy City Managers needs to be attributed to General Managers. Thirdly, amendments are needed to adjust the thresholds applied to the level of authority of Supply Services to award contracts on behalf of a Director for competitive solicitations awarded on the basis of Lowest Responsive Bid and of authorized staff to initiate call-ups from Standing Offers.

The DoA By-law sub-section 3(2) allows for “the authority delegated to a specific staff member to be further delegated by the authorized person to staff members within the applicable department or branch provided that such delegation is authorized in writing and does not exceed the authority delegated by this by-law to the authorized person”. It is recommended that the Purchasing By-law include a similar clause under the

responsibilities and authorities section of the By-law. This will ensure alignment between the authorities in the two by-laws. This has been added as the new subsection 5(8) which aligns to the language of the DoA By-law. Under this amendment General Managers and Directors will be authorized to further delegate their authority given through the By-law to Supply Services or to staff within their department up to two organizational levels below.

Where authority has been sub-delegated to a staff member in accordance with this provision, that authority cannot be further sub-delegated. For example, if a General Manager delegates their authority to a Director, the Director cannot further sub-delegate that authority.

The alignment between the by-laws supports the City's priorities to reduce the amount of corporate administration and effectively place accountability with staff to make decisions when deemed procedurally effective.

Supply Services will implement this amendment with the appropriate procedures to ensure best practice governance and administration of the written delegations. The responsibility for reporting will continue as per current practices as a part of the existing Delegation of Authority reporting prepared by Supply Services. Supply Services currently reports to Council on a semi-annual basis all contracts awarded under delegation of authority, and on an annual basis any contracts awarded in a manner not in compliance with the By-law.

Staff recommends that the delegated authorities formerly held by the Deputy City Manager be transferred to General Managers to further reflect the organizational realignment and the subsequent changes made to the DoA By-law. This would provide General Managers with the following authorities: to award contracts on the basis of Best Value greater than \$500,000; to award Special Circumstance contracts greater than \$100,000 to address emergency events; and in conjunction with Supply Services, to award Non-Competitive Contracts greater than \$100,000.

As currently specified in the By-law, the following contracts would remain subject to Council approval: any contract requiring approval from the Ontario Municipal Board; any contract prescribed by Statute to be made by Council; where the cost amount proposed for acceptance is higher than the Council approved branch estimates and the necessary adjustments cannot be made; where the revenue amount proposed for acceptance is

lower than the Council approved branch estimates; where a major irregularity precludes the award of a tender to the supplier submitting the lowest responsive bid; where authority to approve has not been expressly delegated, and where a contract is a result of a public private partnership (“P3”) opportunity.

Under the existing Purchasing By-law, Supply Services currently has authority to award contracts on behalf of Directors up to \$500,000 for all competitive solicitations (Lowest Responsive Bid and Best Value). Staff recommends that Supply Services’ authority to award contracts on behalf of Directors include solicitations greater than \$500,000 awarded on the basis of Lowest Responsive Bid. This higher threshold would expedite the contract award process for these lower risk contract awards. Supply Services would require that a purchase request have the required approvals and the necessary budget before beginning a procurement process and because these contracts are awarded solely on the basis of lowest cost, there is minimal value added by having these contracts sent back to departments for final contractual approval based on a given threshold value.

As defined in the By-law, a Standing Offer is an offer from a supplier that allows the City to purchase frequently ordered goods, services or construction from suppliers at prearranged prices, under set terms and conditions, when and if these are requested but no contract exists until the City places an order against the Standing Offer. An order against a Standing Offer is called a “call-up”.

Subsection 21(9) currently states that call-ups from Standing Offers may be made to a maximum of \$150,000, and exceptions to this maximum amount may be made by Supply Branch where there is a financial advantage to be achieved by the City.

In Subsection 21(8), City staff may be designated the authority to issue call-ups to a maximum of \$100,000 from a standing offer provided that the purchase is properly authorized by the Director. Staff recommends that this limit be raised to \$150,000 to bring it into alignment with subsection 21(9).

Adjustments to reflect the Organizational Alignment in 2016

More broadly, the By-law was reviewed by staff to also identify housekeeping amendments needed to ensure organizational structure terminology, roles and definitions reflect changes to staff components, administrative reorganizations or

changes to programs and services (e.g. references to “Supply Branch” have been amended to read “Supply Services”).

Under the organizational changes in 2016 shifting the City’s municipal structure from two broad portfolios to nine departments, the City Treasurer position was combined with the position of General Manager, Corporate Services. To align to this restructuring and the removal of the Deputy City Manager level within the previous organization structure the By-law was reviewed to identify needed realignment, staff recommends that the duties and responsibilities held by the City Treasurer as outlined in the current Purchasing By-law be amended to become duties and responsibilities attributed to the General Manager, Corporate Services and City Treasurer, or the Chief Procurement Officer.

This represents an adjustment to the responsibility of the Chief Procurement Officer that supports the streamlining of duties and responsibilities while further aligning the Chief Procurement Officer’s authorities consistent with the revisions made under the mid-term governance review last fall. Under that review, subsection 31(5) of the Purchasing By-law was amended to provide that both the City Clerk and Solicitor and the Chief Procurement Officer, have the ability, as appropriate, to review and approve formal agreements authorized under the By-law.

The responsibilities and duties to be shifted from the City Treasurer to the Chief Procurement Officer include the authority to designate staff increased authority to issue call-ups from Standing Offers to a maximum of \$150,000, the Approval Authority of Liability Insurance Coverage provided on appropriate contracts, duty to submit Semi-Annual Delegation of Authority Reports to Council, and with respect to Litigation Exclusion Provision, authority to reject a quotation, tender, or proposal and obligation to advise Council of intention to reject.

Replacing “Purchasing” with “Procurement” and additional terminology clarification

With the amendments to the By-law at this time, it is also the recommendation of staff that it is opportune to update the By-law name and terminology from “Purchasing By-Law” to “Procurement By-Law”. This would bring clarification of terminology to this service area and reflect adoption of best practices related to procurement. This update

will reflect the full scope of activities that are carried out under procurement, which is broader than purchasing.

On page 97 of her September 2005 report to Toronto City Council ([Toronto External Contracts Inquiry Report Volume 2: Good Government](#)), being the result of two judicial inquiries, Madam Justice Denise Bellamy described the distinction as follows:

“There is a difference between purchasing and procurement. Purchasing is essentially the process of buying, whereas procurement is the broader process of dealing with clients, budgets, contract management, and defining and following procurement policies, codes of conduct, approvals, and so on. The term “procurement” better captures what wise expenditure of taxpayers’ money is about.”

Accordingly, it is proposed that this By-law be amended to reflect the understanding of procurement as a broader process. This entails housekeeping amendments throughout the By-law to replace terminology of purchasing with procurement. This would require that the Purchasing By-law be renamed as the Procurement By-law with no anticipated implications to operational requirements. This change in name will necessitate a review of procedures and policies to reflect the new name, but with only housekeeping implications.

An additional reference clarification is required regarding the procurement guide reference in the By-law. Subsection 3(2) of the By-law references the “National Institute of Governmental Purchasing Guide” as a reference tool that can be used to establish definitions of any procurement terms within the By-law that are not explicitly defined in Subsection 3(1). The guide has since been rebranded as the “NIGP Dictionary of Procurement Terms” and it is recommended that the By-law be amended to reflect this change.

RURAL IMPLICATIONS

There are no rural implications for this report.

CONSULTATION

There are no external consultation implications for this report.

COMMENTS BY THE WARD COUNCILLOR(S)

This is a city-wide report.

ADVISORY COMMITTEE(S) COMMENTS

Not-applicable.

LEGAL IMPLICATIONS

There are no legal impediments to implementing the recommendations contained in the report.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

FINANCIAL IMPLICATIONS

There are no financial implications to implementing the recommendations contained in this report.

ACCESSIBILITY IMPACTS

There are no accessibility implications with this report.

TERM OF COUNCIL PRIORITIES

This report supports the Term of Council Priorities of Financial Sustainability, as well as, Governance Planning, and Decision Making.

DISPOSITION

Upon approval of the report by City Council, staff in applicable Departments, in particular Supply Services, will implement changes to all related processes, procedures, and By-laws which are required to carry out the report as approved.

Document 1

The By-law with amendments indicated in strikethrough mode is attached. (Held on file with the City Clerk)