

# Collingwood Inquiry – Procurement

Best Practice Discussion

Marian MacDonald

Mike Pacholok

# Purpose of having a Procurement Policy

- To ensure that publicly funded goods and services are acquired through a process that is **open, fair, and transparent**
- To maintain the **integrity** of the procurement process by using the most appropriate procurement method
- To achieve **best value for money** through competitive procurement processes or allowable non-competitive processes
- To outline roles, responsibilities and **accountability** throughout the process
- To ensure procurements are managed consistently and comply with relevant Trade Agreements

# Legislative requirements for a Procurement Process

- *Municipal Act, 2001*, S.O. 2001, c. 25 – Section 270(1)(3) – requires Municipalities to have a procurement policy
  - Does not set out any guidelines on what it should contain
- Ontario's Broader Public Sector Procurement Directive
  - While not applicable to Municipalities it is considered a best practice document in public sector procurement
- Municipalities required to follow certain trade agreements with respect to procurement
  - Comprehensive Economic Trade Agreement (CETA) – Canada and the EU
  - Canada Free Trade Agreement (CFTA) – between Provinces, Territories and Federal Government

# Procurement Process Should Contain

- **Roles & Responsibilities**
- Application/Exemptions
- Segregation of Duties
- Approval Authorities
- **Planning**
- Procurement Methods
  - **Competitive Procurement**
    - Types of procurements
    - Rules against discrimination
    - Time on market
    - How bids are received
    - How evaluation will work
    - Evaluation Teams
  - **Non-competitive Procurement Exceptions**
    - Advanced Contract Award Notice
- Debriefing Process
- Bid Dispute Process
- **Prohibition on lobbying/donation/sponsorship or clear guidelines (ie – registry)**
- Disposal of Assets
- Public Posting of Procurement Information
- Contract Establishment
  - Execution of Contract
  - Contract Terms and Conditions
- **Contract & Supplier Performance Management**
- **Supplier Code of Ethics**
- **Supply Chain Code of Ethics**

# Roles & Responsibilities

## Procurement Staff

- Recommend most appropriate procurement method
- Oversee the Procurement Process
- Work with department staff to plan and create procurements
- Identify additional resources to assist in development or oversight of procurement
  - Legal
  - Fairness
- Designated contact for vendors prior to and during process
- Gather market data to support procurements
- Avoid and identify conflict of interests

## Department Staff

- Identify budget and needs in a manner that allows sufficient time for the procurement process
- Work with procurement staff to develop procurements
  - Scope of Work
  - Specifications/Drawings
  - Business Terms
- Avoid and identify conflict of interests
- Identify additional resources to assist in development of procurement
- Contract management

# Roles & Responsibilities

## Politicians

- Approve overall procurement policy and procurement delegations of authority
- Approve budget and work with department staff on needs identification
- Remain arms length from staff and vendors through the procurement process
- Approve procurement award recommendations in accordance with Delegations of Authority
- Refrain from or declare lobbying efforts
- Avoid and identify conflict of interests

## Vendors

- Engage in pre-procurement discussion on needs
- Respond to procurement opportunities
- Follow procurement process
- Abide by contract terms and conditions
- Avoid and identify conflict of interests

# Procurement Planning

- Policy should require planning – Development of annual procurement plans, part of the budget conversation
- Procurement should position itself as a key advisor
  - Should be part of the conversation in planning for procurements in the upcoming year and in future years
  - Should identify the other key players who should be involved – e.g. legal, finance
- Help to determine the sourcing strategy – Provides an opportunity to:
  - leverage market data to inform strategy (e.g. who is in the market place)
  - Seek additional data from the market (market sounding)
  - Help to determine appropriate procurement vehicle including leveraging available bulk purchasing opportunities
    - Municipalities can use the Province of Ontario Vendor of Record Program to acquire more than 60 commonly purchased goods and services

# Procurement Process - General

- Policy should be flexible to determine the appropriate competitive procurement vehicle
  - Request for Tenders, Request for Quotation, Request for Proposals, Negotiable Request for Proposals, Request for Qualification, Request for Information, Request for expression of interest
- Policy should set out how long competitive procurements are to be out on the market to allow for a response
  - Trade Agreements dictate tendering period for larger value procurements
  - Trade Agreements require that all procurements over \$100,000 must be open and competitive
    - Under \$100,000, the municipality could invite at least three companies, in writing, to participate in a procurement process



# Procurement Process - General

- Policy should be clear about how evaluation of bids/proposals will be dealt with at high level
- Policy should set out expectations of developing procurements free of discrimination
- Should set out a Delegation of Authority framework based on value and procurement method
  - Delegation of authority framework should set out both authority to conduct procurement and authority to award procurements
- Following evaluation and prior to contract award, allow for a pre-award bid dispute process

# Procurement Process – Complex Procurements

- May require use of external resources to supplement staff knowledge to develop and/or oversee procurement
  - Subject matter experts (ie – sector experts, procurement specialists, fairness)
  - Professional Services (ie - Architects, Engineers, lawyers)
- Complex infrastructure procurements may be done in different ways, with different risk profiles:
  - Design-Bid-Build – most traditional
  - Design-Build
  - Design-Build-Finance
  - Design-Build-Finance-Operate-Maintain
  - Construction Management
- CCDC documents are a good resource

# Procurement Process - Lobbying & Black out Period

- Prior to a procurement
  - Understanding what is out in the market is ok – but no promises to the suppliers
  - Suppliers can approach the municipality – direct them to appropriate channel (procurement/unsolicited proposal)
- Procurement Period
  - Invoke a ‘black out’ period a reasonable time prior to the release of the procurement during which communication with vendors ceases
  - Identify single point of contact for each procurement for vendors and any other interested parties with appropriate penalties if breached
  - Prohibit vendors offering donations/sponsorship to municipality while bidding on a procurement
- During Contract
  - Discussions with the successful vendor is critical
  - When discussions move outside the four corners of the contract, it’s lobbying

# Procurement Process - Conflict of Interest

- Process should contemplate conflict of interest and unfair advantages and require both staff, politicians and vendor to declare potential conflicts
- Staff must disclose potential conflict of interest
  - Staff or family members may somehow personally benefit from the procurement decision (ie – family member works for/with vendor)
  - Staff person must disclose potential conflict of interest and remove themselves from procurement process such as from evaluation team
- Vendor must disclose potential conflict of interest and unfair advantage
  - Hiring of a former municipal employee may create potential conflict of interest
  - Working on early work that is vital to the main procurement

# Non-Competitive Procurement

- From time to time, a non-competitive procurement process may be appropriate
- Procurement policy should clearly indicate non-competitive procurement exceptions and the delegations of authority framework should identify who, and at what value, must approve use of non-competitive procurements
- An Advance Contract Award Notice can be issued, and may be required by Trade Agreements, identifying the decision to award a non-competitive contract
  - Helps to identify if there is truly a single vendor in the marketplace
  - Allows opportunity for a competitive process if vendors are identified
- Conflict of interests still need to be considered

# Non-Competitive Procurement

- Allowable exceptions to competitive procurement:
  - Emergency/urgent situation such as threat to public health
  - Unforeseen circumstances
  - Monopoly
  - Proprietary (patent/trademark/copyright)
  - Lack of response to a competitive process
  - Warranty
  - Confidentiality
  - Single vendor in the marketplace
- Lack of planning or insufficient time to conduct a competitive procurement, unless urgent, are not considered allowable exceptions

# Unsolicited Proposals

- Establish a policy on what staff are to do with respect to unsolicited proposal
- Should have staff opportunity to review the proposal and determine if appropriate to consider
  - Should not be a replacement for an upcoming procurement
  - Should not require more work on behalf of the municipality to implement
  - May want to limit when unsolicited proposals can be accepted (ie – just prior to a procurement)
- Provide process of how to introduce competition – use of Swiss Challenge

# Contract & Supplier Performance Management

- Procurement document should be clear on:
  - Scope of work
  - Performance standards and penalties for failing to deliver
  - Other terms and conditions of the contract such as:
    - Term
    - Termination
    - Performance security
    - Confidentiality
    - Insurance/WSIB/Indemnification
    - Contract remediation process
- Staff who manage contract should track vendor performance against contract and monitor spend rate
  - Document the performance
  - Discuss with vendor the performance
  - Be clear about consequences



# Code of Ethics

## **Municipal staff and politicians**

- Treat everyone fairly
- No potential or real conflict of interest – ongoing disclosure
- No acceptance of gifts/favours
- Act in accordance with procurement policy and delegation of authority
- Maintain confidentiality – proper use of confidential information

## **Vendors**

- No misrepresentations
- No collusion
- No potential or real conflict of interest – ongoing disclosure
- No intimidation/threats
- No offering gifts/favours
- Maintain confidentiality

# Other Best Practices

- Require mandatory procurement training new staff and counsellors
- Bulk Purchasing Opportunities
- Electronic Bidding
- Category Management
- Environmental Procurement Policies
- Ethical Procurement Policies
- Supply Chain Diversity Policies
- Community Benefits Policies