



Administrative Report

Office of the Manager, Procurement and Compliance

To: Warden MacDonald and Members of Essex County Council

From: Sandy Pillon
Manager, Procurement and Compliance

Date: Wednesday, February 07, 2024

Subject: Procurement Policy Review

Report #: 2024-0207-FIN-R03-SP-DMS

Purpose

The purpose of this Administrative Report (the "**Report**") is to provide County Council with the necessary information for Council to approve a revision of the County's Procurement Policy. A draft of the proposed revised Procurement Policy, which was drafted as part of Administration's ongoing requirement to periodically conduct formal policy reviews, is appended to this Report as **Appendix "A"**.

Background

The *Municipal Act, 2001* requires municipalities to have certain policies in place. One of those mandatory policies is with respect to the "procurement of goods and services" as per Section 270(1)3. of the *Municipal Act, 2001*.

The County established a formal written Procurement Policy around 2004. When the Manager of Procurement and Compliance position was created in or about 2018, a thorough review and update of the existing Procurement Policy was conducted, which resulted in the latest version of the Procurement Policy, bearing Policy Number 19-003 being approved by Council in June of 2019.

Section 22.4 of the County's existing Procurement Policy requires that "[a] formal policy review shall take place every five (5) years or sooner should it be legislatively required." We are approaching the five (5) year deadline to review the Procurement Policy, and, as such, have conducted a formal policy review at the administrative level for Council review, consideration, and approval.

As the County has taken steps to formalize the procurement process and align better with best practices over the past number of years, the Procurement Office has become aware that our Procurement Policy contains language that may be perceived as vague, may be subject to interpretation, and may require clarification. As such, as part of the formal review process, the Procurement Office, with the support of the County Solicitor has attempted to make the language of the Procurement Policy as clear as possible and to ensure it aligns with the best practices being taken by other municipalities.

It is becoming increasingly important for the County's Procurement Office to ensure that the County's Procurement Policy is as advanced and thorough as possible, as:

- (1) local municipalities are increasingly looking to the County for guidance on best procurement practices;
- (2) other public entities are increasingly looking to the County as the leader in public procurement locally;
- (3) the Procurement Office currently oversees about \$146,000,000 annually in the procurement of goods and services on behalf of the various County departments; and
- (4) public entities continue to be highly scrutinized for the spending of public funds.

Discussion

The draft revised Procurement Policy was not created solely with County Administration input. The County worked in collaboration with local municipalities, construction associations, and other municipal peers in revising the Procurement Policy, actively seeking comment and feedback from those groups.

Report Highlights

- (1) Administrative Highlights
- (2) Ability to Award if Within Council Approved Budget
- (3) Reporting and Contract Negotiations
- (4) Disposal of Surplus Assets

The suggested revisions to the County's Procurement Policy align the County's procurement with industry best practices. The intent of the

proposed revisions, as set out in this Report and in the draft revised Procurement Policy, is to enable procurement processes to be efficient and effective, and strengthen the Procurement Policy while enabling the deployment of various procurement tools and continuing to safeguard the principles of openness, fairness, transparency, and accountability, which have guided the County's approach to procurement to date.

The draft revised Procurement Policy has resulted in the existing Procurement Policy being reformatted, with additional language and content being included to ensure the Procurement Policy addresses any areas which Administration previously identified as being too vague, subject to interpretation, or silent on certain issues all together. We have further added or modified language to align the draft revised Procurement Policy with what is broadly recognized as being "public procurement best practices".

The following is a summary of the key recommended revisions:

- (1) Section 1.0** – Subsection (a) now also addresses the disposal of surplus assets, and subsection (b) includes a new policy purpose statement.
- (2) Section 3.0** – This Section has been revised to now include the responsibilities for Project Leaders, Managers, Supervisors, and the Procurement Office.
- (3) Section 4.0** – This Section has been revised to ensure that (1) only amounts that are budgeted for are being expended and (2) to address the issue of permitting additional funds to be expended on an existing contract. These revisions are being proposed to address ongoing issues regarding (1) inflation and (2) scope of work changing during a project, ex. additional work required is discovered once road work is commenced.

As per Section 4.7, any increase of 10% or higher above the Council approved budget requires Council approval and, as per Section 4.9, Council shall be provided with regular reporting of, among other things, expenditures above budget, but less than 10%, with an explanation of how the amount above budget is being funded.

In Section 4.10 the threshold amounts are being increased from \$300,000 to \$500,000. In the existing Procurement Policy expenditures over \$300,000 required a signature by the Warden and the Clerk. In the draft revised Procurement Policy, the Warden

and Clerk will not be required to sign unless the expenditure is \$500,000 or greater.

However, please note, that where a competitive procurement results in a purchase that is within 10% of the Council approved budget, the Contract will be signed by the Approval Authority provided for in the Table at Section 4.10. Council will have already provided the authority for that Contract through the formal budget process. Further, Council will receive regular reporting as part of Administration's reporting obligations provided for in Section 4.9

- (4) **Section 6.5** – This Section has been revised to add a consultation requirement to ensure that (1) other affected departments are consulted, (2) the procurement does not expose the County to cyber risk, and (3) the procurement aligns with the County's Record Retention Policy.
- (5) **Section 13.0** – This Section has been revised to clarify when negotiations can be conducted to finalize the terms of the Contract to be entered into.
- (6) **Section 14.0** – This Section has been drafted to make it clear that the County can cancel a procurement process, and outlines the circumstances that may give rise to the County choosing to do so.
- (7) **Section 19.0** – This Section has been drafted to clarify the County's process of disposing of surplus assets.
- (8) **Section 20.0** – This Section has been drafted to make it clear that the County can decide **NOT** to deal with certain proponents and to exclude certain proponents from the procurement process all together.

Financial Implications

There are no immediate or readily quantifiable financial implications to the County arising from the revised Procurement Policy. However, it is hoped that through continued improvements to the County's procurement processes, including the adoption by Council of the revised Procurement Policy, cost savings to the County will result.

The ability for Administration to move through the procurement process when spending is within approved budget limits will also help to improve the

efficiency of council meetings and respond to the market's demand for a shorter time period from bid submission to award of contract.

Consultations

This Report was drafted with the County Solicitor, with the revised Procurement Policy also being drafted with the County Solicitor.

Internally, the Senior Leadership Team was consulted with respect to the revised Procurement Policy being presented to Council in this Report.

Externally, the local municipalities through the Regional Procurement Group were consulted, the Heavy Construction Association was provided with an opportunity to provide comments on the County's existing Procurement Policy, and other public entities were consulted through the Ontario Public Buyers Association.

Recommendation

That Essex County Council approve the revised Procurement Policy and adopt a By-law confirming same.

Approvals

Respectfully Submitted,

Sandy Pillon

Sandy Pillon, Manager, Procurement and Compliance

Concurred With,

David M. Sundin

David Sundin, BA (Hons), LL.B., County Solicitor

Concurred With,

Sandra Zwiers

Sandra Zwiers, MAcc, CPA, CA, Chief Administrative Officer

Appendix	Title
A	Revised Procurement Policy
B	Municipal Comparison for Institutional Governance