

The Regional Municipality of York

Committee of the Whole
Finance and Administration
January 16, 2020

Report of the Commissioner of Finance

Regional Procurement Bylaw

1. Recommendations

1. Council repeal the Purchasing Bylaw (2017-30) and enact a Procurement Bylaw, to incorporate the principles set out in this report.
2. The Regional Solicitor prepare the bylaw for consideration of Council.

2. Summary

This report recommends Council repeal the existing Purchasing Bylaw (2017-30) and enact a Procurement Bylaw (the “Bylaw”) which incorporates the principles set out in this report.

3. Background

York Region procures approximately \$400 million in contracts annually

Since 2016, the Region has undertaken over 1100 procurements and awarded in excess of \$1.4 billion in contracts. Included in those procurements were 324 Requests for Proposal, at the total awarded value of just under \$400 million, 575 Tenders, awarded at just over \$1 billion, and 35 RFQs, awarded at \$1.4 million.

A review of the Bylaw is conducted periodically

Section 20.1 of the Purchasing Bylaw requires the bylaw be reviewed and evaluated for effectiveness at least once during every term of Council.

The most recent review was undertaken in early 2017 and resulted in Council enacting the current version of the Purchasing Bylaw in May 2017. The Purchasing Bylaw amendments which were approved by Council in May, 2017, were largely administrative in nature, as opposed to more substantive revisions in previous Bylaw updates. These amendments focused on ways in which Regional procurement might be more responsive to business needs in executing Council’s mandate, while still preserving the overarching principles of competition, best value, fairness, objectivity, accountability and transparency.

Recent regulatory changes helped to inform current Bylaw review

In early 2019, the Procurement Office retained external legal counsel to conduct a comprehensive review of the Purchasing Bylaw. This review resulted in a number of recommendations to comply with the recently enacted trade agreements and to bring the Bylaw in line with the purchasing bylaws of comparable municipalities. Other recommendations were to create a number of protocols outside of the Bylaw to provide details regarding specific administrative practices that will modernize the Region's procurement processes in compliance with the Bylaw.

In the time since the Bylaw was last reviewed in 2017, several trade agreements have come into effect including the Canadian Free Trade Agreement, the Canada-European Comprehensive Economic and Trade Agreement and the Ontario-Quebec Trade and Cooperation Agreement (the "trade agreements").

Trade agreements support the exchange of goods and services between different jurisdictions by reducing or eliminating tariffs and other barriers to trade which may prevent the sale of goods and services from one jurisdiction to another. Trade agreements are seen as beneficial because they can increase economic growth and provide local businesses with access to other markets.

One of the main goals of the trade agreements is to ensure government procurement activities, in excess of certain prescribed thresholds, are conducted in a non-discriminatory, impartial, transparent and accountable manner. The trade agreements therefore include various requirements which will impact municipal procurements, and these requirements were taken into consideration as part of the Bylaw review.

Proposed new Procurement Bylaw is based on an extensive consultation process

The draft bylaw and protocols were developed as part of an extensive consultation process which occurred through 2019. This process included consultations with internal stakeholders and external legal counsel, as well as inter-jurisdictional best practice research. This work was undertaken by a working group which consisted of representatives from Legal Services and the Procurement Office.

4. Analysis

The proposed new Procurement Bylaw represents a foundational step in the Region's procurement modernization

Since 2017, the Region has made significant progress on various initiatives aimed at modernizing its procurement practices. A key goal of the last Bylaw review, which occurred in early 2017, was to identify opportunities to improve processes, creating more structure, consistency and transparency in procurements. The proposed new Procurement Bylaw would also strengthen compliance with current legislation, while also enabling more flexibility

and the ability to leverage technology and innovative approaches in procurement, to better support the Region's business needs.

The purposes, goals and objectives of the existing Purchasing Bylaw are set out in Section 1.1. These remain in the proposed new Procurement Bylaw, strengthening the Region's procurement practices and further enhancing good governance, encouraging competition, obtaining best value, and ensuring fairness, objectivity, accountability and transparency.

The proposed new Procurement Bylaw would ensure compliance with trade agreements and support good governance

Staff recommended the repeal of the existing Purchasing Bylaw and the enactment of the proposed Procurement Bylaw to ensure compliance with the trade agreements and to support good governance. This includes focusing on ways in which Regional procurement might be more responsive to business needs in executing Council's mandate, while still preserving the overarching principles of competition, best value, fairness, objectivity, accountability and transparency. Details of the key amendments are set out below.

Table 1
Differences between existing Bylaw and proposed new Bylaw

Key Bylaw Elements Remaining The Same
Many provisions remain unchanged, as efforts were made to preserve as much of existing language as possible.
Areas requiring additional clarity have been simplified and redrafted.
Key Bylaw Changes
Bylaw divides procurements into two categories, standard and non-standard.
Threshold triggering the need for a competitive procurement process, currently set at \$150K, is decreasing to \$100K to comply with trade agreements.
Bylaw establishes a Procurement Review Committee to replace the Bid Review Committee.
New Procurement Limits have been defined, providing more rigour, but also more options, for low dollar value procurements.
Commissioners would be authorized to approve renewals of all contracts which have been awarded in accordance with the Bylaw.
A schedule of exemptions would be listed in the Bylaw.
Content procedural in nature has been excluded from the Bylaw and will be dealt with as part of complementary administrative protocols.

Proposed new Procurement Bylaw divides procurements into two categories, standard and non-standard

Standard procurements are procurements which use the standard procurement methods normally used to procure the type and value of deliverables such as Requests for Quotation (RFQ), Requests for Tender (RFT) and Requests for Proposal (RFP).

Non-standard procurements use methods other than what would normally be used to procure a certain type and value of deliverables. These methods include direct purchases and emergency purchases.

The authority limits for standard procurements would remain the same as the current Bylaw, however, the Chief Administrative Officer would have authority to award non-standard procurements with a total cost up to \$500,000, and non-standard procurements in excess of this value would require Council approval. In addition, the new Bylaw stipulates all non-standard procurements with a total cost in excess of \$100,000 require approval of the Procurement Review Committee.

**Table 2
Award and Renewal Authorization Thresholds**

Standard Procurements		Award*	Renewal
Low Value Procurements	Up to \$25K (1 Quote)	Department	Department
	\$25K to less than \$50K (2 Quotes)	Department	Commissioner
	\$50K to less than \$100K (3 Quotes)	Commissioner	Commissioner
Open Procurements*			
RFT and RFP	\$100K to \$500K	Commissioner	Commissioner
RFT	More than \$500K	CAO	Commissioner
RFP	More than \$500K - up to \$2	CAO	Commissioner
RFP	Million	CAO	Commissioner
	More than \$2 Million		
Non-Standard Procurements		Award*	Renewal
Direct Purchases*	Up to \$100K	Commissioner	Commissioner
	More than \$100K - up to \$500K	CAO**	CAO
	\$500K and more	Council**	Council
Emergency Purchases*	Up to \$100K	Commissioner	
	More than \$100K	CAO**	

*Original contract amount including all renewals (excludes Council-authorized contingencies and scope changes)

** Based on recommendation of Procurement Review Committee (PRC)

Proposed new Procurement Bylaw establishes a Procurement Review Committee

The current Bylaw established a Bid Review Committee to review bid irregularities and challenges to the procurement process. The proposed Procurement Bylaw establishes a Procurement Review Committee (PRC) with an expanded mandate that includes reviewing

bid irregularities, dealing with procurement protests and supplier suspensions, determining whether non-standard procurements should be permitted and determining whether a purchase is exempt under the Bylaw. This Committee would consist of one representative from the Procurement Office, one solicitor from Legal Services and a management representative from the department requesting procurement of the deliverables.

Threshold for triggering the competitive procurement process is decreasing from \$150K to \$100K to comply with trade agreements

The existing threshold value for requiring procurement through a formal Request for Tender or Request for Proposal process was established at \$150,000 in 2017 when the Purchasing Bylaw was last amended. The Procurement Bylaw decreases this to \$100,000 to comply with the trade agreements, requiring procurements with a value in excess of \$100,000 to be procured through an open procurement process, unless otherwise approved by a Procurement Review Committee. To facilitate adherence to this threshold, the proposed new Procurement Bylaw includes consistent thresholds for the Commissioners’ authority to award emergency purchases. The Chief Administrative Officer would have authority to approve emergency purchases above \$100,000.

The award of open procurements with a value in excess of \$100,000 and all emergency purchases will be reported to Council on a quarterly basis.

The proposed new Procurement Bylaw provides more rigour in relation to low dollar value procurements

The current Bylaw requires a minimum of three quotes where the anticipated total cost exceeds \$100,000 and less than \$150,000. Purchases with a total cost of less than \$100,000 only require one quote. The proposed Bylaw sets a minimum number of quotes depending on the total cost of the deliverable, in accordance with Table 1 below:

**Table 3
Low Dollar Value Procurements**

Total Cost	Less than \$25K	Greater than \$25K and less than \$50K	Greater than \$50K and less than \$100K
Minimum Number of Quotes	One Quote	Two Quotes	Three Quotes

The proposed Bylaw also permits staff to conduct evaluative Requests for Quotations which include pre-determined criteria (similar to a Request for Proposal process) for low dollar value procurements. This would allow staff to award a contract based upon best value.

Authority to award RFPs over \$2 million shifting from Council to Chief Administrative Officer

Currently, the Bylaw requires Council to approve the award of RFPs where the total cost exceeds \$2 million, even if the successful proponent has the highest score. RFP scores are determined by an evaluation committee of staff with subject matter expertise, using pre-determined objective criteria. Once scores have been assigned by the evaluation committee, in order to maintain the integrity of the RFP process and avoid liability, the Region is bound to follow through with the award recommendation, provided the award is within budget. This is analogous to awarding to the lowest bidder under a Request for Tender process. Staff recommend RFP contract awards over \$2 million be incorporated into the quarterly reporting of other awards under the Bylaw in place of individual Council approval.

Authority to approve renewals of all contracts which have been awarded in accordance with the Bylaw shifting to Commissioners

The 2017 Purchasing Bylaw introduced a new provision permitting Commissioners to authorize contract renewals, provided: (a) the option to renew the contract was included in the original award; (b) the total cost of the contract inclusive of the renewal is within the Commissioner's approval authority; and (c) there is demonstrable evidence the contractor has performed the contract satisfactorily. In addition, the total term including approved renewals or extensions may not exceed five years without a further approval from Council.

Staff recommend the proposed new Procurement Bylaw permit Commissioners to be accorded full authority to renew contracts, even if the total cost exceeds the Commissioner's approval authority, as long as the contract was awarded in accordance with the Procurement Bylaw.

This would promote administrative efficiencies since the Chief Administrative Officer would not be required to review numerous contract renewals from all departments where the Commissioners' general authority is exceeded. Also, the Procurement Office would retain responsibility for ensuring renewals comply with the terms of the contract and are exercised in compliance with the Bylaw.

A schedule of exemptions would be included in the Bylaw

As a result of the Purchasing Bylaw review in 2014, the schedule of exemptions from the formal purchasing process for certain transactions and commodities was eliminated. At that time it was determined some of the exemptions were no longer applicable and others could be dealt with through the Region's Delegation of Signing-Authority Bylaw.

As part of the 2017 review, a limited number of exemptions were reinstated to address concerns raised by staff that certain exemptions, which had previously been removed, remained applicable and were not addressed through the Delegation of Signing-Authority Bylaw.

During the recent Bylaw review, it was determined that additional exemptions were required beyond what was included in the 2017 Bylaw to address a number of circumstances where

the public procurement process is not appropriate for the purchasing of certain deliverables. Additionally, the trade agreements allow for additional exemption categories which were not included in the 2017 Bylaw.

Based upon the results of the consultation process, it is recommended a schedule of exemptions (Schedule 1) be included in the Procurement Bylaw. In addition, the Procurement Review Committee would have authority to determine certain goods and/or services be exempt under the Procurement Bylaw either because the exemption is permitted under the trade agreements, or it is not appropriate to purchase the deliverable through an open public procurement process.

Content procedural in nature has been moved into the new comprehensive procurement protocols

Staff prepared a number of administrative protocols which support the Procurement Bylaw, but will not form part of the Bylaw. These protocols would be administered by the Procurement Office and include the following:

**Table 4
New Bylaw Protocols**

Protocol	Description
Invitational Competition	This protocol sets out the steps and identifies roles and responsibilities for conducting a competitive procurement process.
Open Competition	This protocol sets out the steps and identifies roles and responsibilities for conducting an open procurement.
Non-Standard Procurements	This protocol sets out the procedures and requirements for acquiring deliverables through a non-standard procurement process.
Qualified Supplier Rosters	This protocol provides procedures and guidance for establishing and managing pre-qualified supplier rosters.
Procurement Protest	This protocol sets out the process for suppliers to make a formal complaint about a particular procurement process.
Supplier Suspension Protocol	This protocol sets out the process for suspending suppliers from participation in the Region’s procurement processes.

Supplier Suspension Protocol replaces Litigating Bidder Prohibition

The existing Bylaw prohibits contractors who are engaged in unresolved litigation with the Region from submitting bids or being awarded contracts until the litigation is resolved. This

“litigating bidder prohibition” was introduced in 2007 and has been effective in avoiding or settling litigation. All parties realize it is in their respective best interests to focus their resources on settling disputes and getting “back to business” rather than litigating.

Staff recommend a Supplier Suspension Protocol be established to replace the litigating bidder prohibition language to comply with the trade agreements.

The Supplier Suspension Protocol provides a number of reasons to suspend suppliers and sets out a process to be followed to suspend a supplier, with a decision to be rendered by the Procurement Review Committee. Suppliers who are currently in unresolved litigation with the Region will no longer be automatically suspended. Unresolved litigation will trigger a Procurement Review Committee to determine whether it is appropriate to suspend the supplier because of the unresolved litigation.

Procurement Bylaw supports the Region’s commitment to social procurement and community benefits

The proposed Procurement Bylaw includes a new section supporting social and community benefits in procurements. Where practical, procurements are to include the requirements of this section, along with all applicable legislation and trade agreements. This provision supports the extensive work undertaken by the Community and Health Services Department and the Region’s Human Services Planning Board, in partnership with the United Way. It would enable the Region to leverage procurement dollars already being spent on goods, services and infrastructure to provide additional physical, social, economic and environmental benefits for local communities and residents. The inclusion of community benefits into projects may also assist the Region with eligibility for Provincial and Federal funding. It is anticipated a formal protocol will be established to provide guidelines and parameters pertaining to social procurement and community benefits.

5. Financial

The new Procurement Bylaw proposed in this report will continue to support the Region’s objectives of obtaining goods and services, reflecting the Purposes, Goals and Objectives of the Bylaw and providing best value-for-money.

6. Local Impact

The Bylaw will continue to support co-operative purchasing opportunities with local municipalities and public agencies

The Region is an active member of the York Purchasing Co-operative group, identifying common needs for certain goods and services procured by a lead agency on behalf of the interested members. Local Municipalities, School Boards and York Regional Police are all members of this group. Regional staff regularly engage in co-operative tenders with local municipalities and other public sector bodies. The proposed new Procurement Bylaw provides for co-operative purchasing to be undertaken by the Region on behalf of local

municipalities and other public agencies, and for the Region to participate in opportunities for competitive procurements initiated by other agencies.

Staff propose to develop clearer administrative guidelines to govern this method of procurement. These will include clear timelines and protocols for engaging other agencies in co-operative purchases and for structuring the procurement documents, ensuring best value for all participants.

7. Conclusion

Section 20.1 of the existing Purchasing Bylaw requires the Bylaw be reviewed and evaluated for effectiveness at least once during every term of Council. As a consequence of the 2019 review, staff recommend repealing the existing Purchasing Bylaw and enacting the proposed Procurement Bylaw to comply with the trade agreements, and to enhance responsiveness to business needs in carrying out Council's mandate while preserving the principles of competitiveness, transparency and best value.

For more information on this report, please contact Jerry Paglia, Director, Procurement Office, at 1-877-464-9675 ext.71650. Accessible formats or communication supports are available upon request.

Recommended by: **Laura Mirabella, FCPA, FCA**
Commissioner of Finance and Regional Treasurer

Approved for Submission: **Bruce Macgregor**
Chief Administrative Officer

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