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Amendment to Procurement By-Law 2014-27 Staff Report to Council

Report Number: 2019-72

Department(s): Legal and Procurement Services, Corporate Services

Author(s): Tracy Assis, Manager, Procurement Services

Meeting Date: July 18, 2019

Recommendations

1. That the report entitled Amendment to Procurement By-Law dated July 18, 2019 be received; and,
2. That Schedule "A" Exceptions to Procurement By-Law 2014-27 (the "By-law") be amended to include acquisitions from government bodies, non-governmental bodies that exercise governmental authority delegated to them, and non-profit organizations as set out in the Canadian Free Trade Agreement ("CFTA") and other applicable trade treaties; and,
3. That provision "x", Section 13.6, Single Source of the Procurement By-law which requires Council to determine an acquisition with a non-profit organization to be fair and reasonable be deleted; and,
4. That Schedule "D" of the Procurement By-law include a new Table 9 which delegates authority to staff to approve acquisitions set out in the Exceptions to the procurement process for non-profit and government bodies within the monetary limits established in Table 9; and
5. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

Purpose

The purpose of this report is to obtain Council approval to amend By-law 2014-27 for

- (i) the deletion of provision “x” from Section 13.6, Single Source of the By-Law relating to acquisitions with non-profit organizations, and
- (ii) the addition of non-competitive acquisitions with non-profit organizations, governmental bodies or non-governmental bodies that exercise governmental authority delegated to them as further described herein to Schedule “A”, Exceptions of the Procurement By-Law to maintain consistency with the Canadian and International Free Trade Agreements; and
- (iii) the addition of a new table of delegated authority to staff regarding the exceptions in (ii) above.

Background

The Procurement By-law is a requirement of the Municipal Act, and sets out the Town’s procedures and practices to procure goods and services that have been approved by Council in the annual capital and operating budgets. Recommendations to revise the By-law to better align the Town’s procurement policies and procedures with the Canadian Free Trade Agreement (CFTA) and other applicable Canadian and International trade agreements are forthcoming and will be addressed in a subsequent report to Council in 2020.

In the interim, and based on recent matters relating to anticipated acquisitions with the Lake Simcoe Region Conservation Authority (LSRCA) for the retention of specialized Engineering Consultants who specialize in LID design and who were procured through the LSRCA’s own competitive public procurement process, it is recommended that the Procurement By-law 2014-27 be amended as set out in this report.

Discussion

The Town’s Procurement By-Law is currently five (5) years old and is undergoing a review and update anticipated to be completed in 2020. The By-Law contains a provision in Section 13.6, Single Source that is now inconsistent with the updated Canadian and International Trade Agreements. Currently, under Section 13.6, staff looking to acquire services from organizations such as the LSRCA would be required to, firstly, seek approval from Council. If approved, would then require that the acquisition be approved on a non-competitive basis in accordance with the threshold amounts and the authority for approving those amounts described in Table 5, Schedule “D” of the Procurement By-Law, attached as Appendix “A”. This would mean that acquisitions with the LSRCA, or any other non-profit organization would require a second Council approval if the acquisition value were to exceed \$100K.

The By-law incorporates the Canadian and International trade treaties that apply to acquisitions over \$100K which, amongst other circumstances, exempts from the competitive procurement rules and requirements contained in the CFTA, acquisitions

from non-profit organizations, acquisitions acquired between government bodies and non-governmental bodies that exercise governmental authority delegated to them from the competitive procurement rules and requirements contained in the CFTA. The CFTA provides:

Chapter Five (5), Article 504 – Scope and Coverage, Section 11 – Non-Application:

This Chapter does not apply to: (i) procurement of goods or services:.... (iii) between enterprises that are controlled by or affiliated with the same enterprise, or between one government body or enterprise and another government body or enterprise; (iv) by non-governmental bodies that exercise governmental authority delegated to them; and (v) from philanthropic institutions, non-profit organizations, prison labour, or natural persons with disabilities.

The recommendations in this report seek to amend the Procurement By-law 2014-27 for clarity and consistency with the provisions of the CFTA regarding acquisitions from government bodies and non-governmental bodies that exercise governmental authority delegated to them, and non-profit organizations as follows:

- (a) Delete the following from Section 13.6 of the single source provisions of the By-Law:

Section 13.6, Single Source, sub-section “x”: “Notwithstanding anything in this by-law, where a purchase is determined by Council to be fair and reasonable and is made from a non-profit corporation supported by the Owner, the Owner may make such a purchase as a single source purchase”; and

- (b) Add the following provision to Schedule “A” Exceptions to the By-Law:

15. Acquisitions from government bodies, non-governmental bodies that exercise governmental authority delegated to them, and non-profit organizations as provided for in the Canadian Free Trade Agreement or other applicable Canadian or International trade treaties.

It is further recommended that the authority to approve these acquisitions be delegated to staff in accordance with the already established thresholds intended for competitive acquisitions (Table 2 of Schedule “D” of the By-Law). The use of the same thresholds provides for a consistent approach to delegated authority, adequate control and oversight, as well as flexibility to staff. As a result, Schedule “D” is amended by adding a new Table 9- Exemptions to Procurement Processes for Non-Profit/Governmental Acquisitions

For reference, the following are attached to this report:

- Appendix A – Amendment By-Law;

- Appendix B – Schedule “A”- Exceptions to By-Law 2014-17 – Current;
- Appendix C - Schedule “A” – Exceptions to By-Law 2014-17 – Proposed revisions shown in highlight;
- Appendix D – Schedule “D”- Thresholds – New Table 9 – Proposed

Conclusion

The proposed revisions to the By-law will ensure continued efficiency in the purchase of budgeted goods and services from non-profit or other government organization and aligns with the Canadian and International trade treaties

Business Plan and Strategic Plan Linkages

Well Equipped and Managed; Efficiency/Financial Management - Ensuring effective and efficient services, as well measuring and benchmarking our financial performance.

Consultation

The C.A.O, Legal & Procurement Services, and Legislative Services were consulted in connection with this report.

Human Resource Considerations

There are no Human Resource requirements as a result of the recommendation in this Report.

Budget Impact

There will be no budget impact associated with the recommended amendments to the Procurement By-Law

Attachments

Appendix A – Amendment By-Law;

Appendix B – Schedule “A”- Exceptions to By-Law 2014-17 – Current;

Appendix C - Schedule “A” – Exceptions to By-Law 2014-17 – Proposed changes in highlight;

Appendix D – Schedule “D”- Thresholds – New Table 9 - Proposed

Approval

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