



Corporate Services Commission
Procurement Services Department
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April 24, 2014

**CORPORATE SERVICES COMMISSION
LEGAL SERVICES AND PROCUREMENT SERVICES
JOINT REPORT 2014-12**

TO: Committee of the Whole

SUBJECT: New Procurement Processes and comments received from:
Economic Advisory Committee
Environmental Advisory Committee
Newmarket Chamber of Commerce

ORIGIN: Manager, Procurement Services

RECOMMENDATIONS

That the Corporate Services Commission, Legal Services and Procurement Services, Joint Report 2014-12 dated April 24, 2014 be received.

COMMENTS

As set out in Legal Services and Procurement Services Joint Report 2014-11 (Item 26 of the Committee of the Whole agenda), staff had distributed for comments a draft version of the report to the Chamber of Commerce, the Economic Advisory Committee and the Environmental Advisory Committee. Subsequent to the comments outlined in the original report (#2014-11), the following comments were received and should any further comments be submitted prior to the deadline of April 25 staff will provide them verbally or via a walk-on addendum report.

Date received	Feedback	Staff Comment/Response
April 18	Staff report on Local Preference is correct in conclusion. Not supportive of a local preference.	No comment

April 18	Do any municipalities have a Tie Bid Policy that is decided by giving preference to the most Local Bidder?	See staff comment below (Comment #2)
April 22	Additional comment that the Town should develop a Sustainable Procurement policy.	See staff comment below (Comment #3)
April 23	Mixed opinion on Local Preference – likes the concept but not sure how it can be deployed in a fair manner.	Addressed in the original report (#2014-11) with further information provided herein.

Response to Comment # 2:

Based on a poll conducted by the Procurement Services Department of Ontario municipalities, there are approximately five (5) municipalities in Ontario, that we are aware that utilize Local Preference as a factor in a tie break situation. One of these municipalities is in the process of removing it as a factor. The policy used by these municipalities does not have Local preference as the first deciding factor, which is typically Past Performance.

Our external Legal Counsel believes that local preference, if placed in the last series of tie break factors, would be very difficult to argue unfairness on the part of the municipality, particularly where the tie break procedure is fully described in the bid call document. If, the decision to favour a local supplier is ranked ahead of other deciding factors (such as lead time, past performance), the interest of local taxpayers is sacrificed to favour that of the local bidder and the decision becomes more difficult for the municipality to support.

Newmarket's first tie break deciding factor is Past Contractor Performance. The Bidder with the best Town performance appraisal would be the selected Bidder and if one of the Bidders does not have a Town performance appraisal, Town staff would proceed with the next step, a Coin Toss.

A companion procedure to the Procurement Bylaw is Newmarket's new formal Contractor Performance system and it is vital that Performance Forms be the primary factor in deciding Tie Bids, as we want to ensure that the Town is awarding a contract to the best performing Contractor.

Advocating Local Preference as a tie break factor will deter Bidders from bidding Newmarket projects and is not being recommended by the Manager, Procurement Services, as it is contrary to the purposes, goals, and objectives of the Procurement by-law and the Agreement on Internal Trade, which are:

- a) To encourage competition among Bidders;
- b) To make goods, service(s) and construction Contractors to be accountable to the Owner and the public;
- c) To ensure fairness and objectivity amongst Bidders during the procurement process;
- d) To ensure openness, accountability and transparency while protecting the financial best interests of the Owner.

The message that Newmarket should be communicating to Local Bidders, is that they presently enjoy distinct advantages that reduce their overhead costs when competing with non-local bidders. Local Bidders should factor these savings into the calculation of their bid cost:

- Reduced costs to transport workers and products to the job site;
- Lower costs to float equipment to the job site;
- Reduced travel time/costs for warranty or maintenance follow-up calls;
- Familiarity with local sub trades.

Response to Comment #3

A new objective of the draft Procurement Bylaw (see page 167 of the agenda, Item 1. i) of the proposed bylaw) is:

“To promote Responsible Purchasing which encourages procurement practices which encompass social, ethical and environmental considerations when acquiring goods, services and construction.”

One of the first steps to support this objective is to introduce a Supplier Code of Conduct which Suppliers must agree and adhere to the Code of Conduct when performing contracts for the Town. This Code of Conduct will contribute to ensuring safe and healthy workplaces for the labour market that provide or make goods, construction and services for Newmarket. The following nine standards from the ILO International Labour Standards, which have been adopted by the Cities of Edmonton, Calgary and London, is being considered by Newmarket and will support the social and ethical aspects of the new objective and addresses of child and forced labour.

1. Forced Labour
2. Child Labour
3. Non-discrimination and Diversity
4. Health and Safety
5. Freedom of Association and Collective Bargaining
6. Wages and Benefits
7. Hours of Work for Goods and Services Produced in Canada
8. Hours of Work for Goods and Services Produced Outside of Canada
9. Overtime Compensation

In collaboration with Town staff and external bodies, where appropriate, a Responsible Purchasing policy and/or additional concepts may be introduced to support the Responsible Procurement objective.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

- Well-Equipped & Managed
- Well-Planned & Connected
- Well-Respected

CONSULTATION

- Commissioner, Corporate Services
- Associate Solicitor
- External Legal Counsel


BUDGET IMPACT

The Responsible Purchasing objective may have an impact on cost of goods, services and construction, but this will be reviewed by and be the decision of the originating Department during evaluation of bids received.

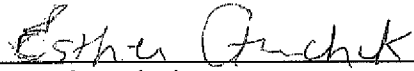
CONTACT

For further information on this report, please contact Gord Sears, Manager, Procurement Services extension 2351.

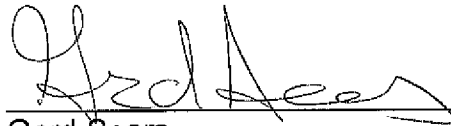
Respectfully submitted,



Anita Moore
Commissioner of Corporate Services



Esther Armchuk
Director of Legal Services/Municipal
Solicitor



Gord Sears
Manager of Procurement Services



Karen Reynar
Associate Solicitor