



Subject: *Alternative Procurement*
To: Corporate and Residential Services Committee
Date Prepared: November 12, 2021
Related Motions:
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Approved by: Kim Ramsay, CAO

Summary

A discussion on procurement processes and policy has resulted in two alternative procurement practices coming to committee for review and a recommended policy change to Council's Procurement Policy. The procurement of picnic shelters for parks in March 2021 and replacement of storage servers in October 2021 are covered in this report. A recommendation to change the thresholds whereby Council reviews alternative procurements is also in this report, aligning the risk with the applicable trade agreements.

Financial Impact Statement

None

Recommendation

It is recommended that Council ratify the two alternative procurement instances and make the recommended change to Appendix A of the Procurement Policy at the December meeting of Council (not time sensitive, no need for a special meeting of Council to give notice).

Recommended Motion

November Council:

Move that the Corporate & Residential Services Committee recommend that Council approve the alternative procurement practices used for the acquisition of picnic shelters and storage servers, as outlined in the report titled Alternative Procurement, as attached to the November 16th agenda.

And that; Council gives notice of intent to approve the changes to the Procurement Policy (around alternative procurement thresholds), as outlined in the report titled Alternative Procurement, as attached to the November 16th, 2021 Executive Committee agenda.

December Council (not time sensitive, no need for a special meeting of Council to give notice)

Move that the Corporate & Residential Services Committee recommend that Council approve the changes to the Procurement Policy (around alternative procurement thresholds), as outlined in the report titled Alternative Procurement, as attached to the November 16th, 2021 Executive Committee agenda.

Discussion

The Procurement Policy was changed by Council in 2019. Among other changes, the ALTP Circumstances were updated to align with Alternative Procurement Practices (ALTP) section with the Provincial Procurement Policy and ALT Practices acceptable under the trade agreements CFTA (Canada Free Trade Agreement) and CETA (Comprehensive Economic and Trade Agreement between Canada and the European Union). In addition to the twenty-three acceptable ALT Practices, East Hants retained four Practices which were unique to them. In order to protect the Municipality from risk, the four ALT Practices (24, 25, 26, and 27) could be used by the CAO when within the Low Value Thresholds (Goods under \$25K, Services and Construction under \$50K), but required Council's approval when exceeding the Low Value Thresholds (Goods over \$25K, Services and Construction over \$50K). The intent was to make sure that any risk of trade agreement non-compliance was identified and mitigated, and that Council was aware of the risk and agreed to proceed.

With the departure of the Procurement Officer, a review of procurements where ALT Practices were used was completed to determine if there were any instances where this section of the Procurement Policy applied. Through this review it was determined that two instances (3 year review was completed) of alternative procurement should have come to Council prior to ordering equipment - picnic shelters (March 2021) and storage servers (October 2021). There is no risk to Council under the current CFTA trade agreements for either of these instances.

As a result of this review, it has become clear that the risk of using these reasons really is only triggered when the procurement value exceeds the thresholds in the CFTA or CETA trade agreements and, effectively, the CFTA threshold is the minimum threshold at which risk starts. Under CFTA, the threshold for when the trade agreement will apply to any Municipal entity is approximately \$105,000 for goods and \$252,000 for services and construction (thresholds are regularly increased per a formula in the agreement). CETA thresholds are much higher.

Alternative Procurement Practices

Alternative Procurement Practices are not intended to avoid a competition or discriminate against specific Suppliers but are alternative methods of procuring Goods, Services and Construction which are available to East Hants when circumstances prevent obtaining competitive bids. Appendix A of the Policy describes the Alternative Procurement Practices which are acceptable and the circumstances in which they are permitted to be used.

Policy Excerpt:

When the Procurement Value is below the High Value Threshold, the CAO may approve the use of Alternative Procurement Practices as follows. When the Procurement Value exceeds the High Value Threshold, approval to use the following Alternative Procurement Practices must be obtained from Council. Such Alternative procurement Practices may not be used when they conflict with trade agreement obligations.

24. Services that may, under the applicable laws of the Province, only be provided by the following licensed professionals: medical doctors, dentists, nurses, pharmacists, veterinarians, accountants, lawyers, and notaries

25. *Prior open competitive processes (by the Municipality or other organizations in the public sector) have clearly pointed to one or a few suppliers and the CAO is confident that the issuance of a Open Competition would return similar results.*

26. *Where the cost (administrative, consulting, etc.) of an Open Competition is felt to outweigh any cost savings that may be enjoyed as a result of the process (this will be in large part measured by the amount of work necessary to ensure the document specifications are accurate and complete so as to validate the Open Competition). This includes the extension of contracts to Entrenched Incumbents.*

27. *Where the number of potential Suppliers who could reasonable provide the Goods, Services or Construction are limited such that it is more efficient to selectively invite quotations/proposals rather than issue an Open Competition.*

Picnic Shelter - The supply of picnic shelters used in our parks is available from a select group of suppliers. As such, ALTP #27 was used as a reason to do a selective invitation for these products. We received 3 quotes from four suppliers and awarded the purchase to the lowest bidder. As the value was over \$25,000, the high value threshold for goods, the ALTP should have been approved by Council in March 2021. The procurement is under the CFTA threshold of \$105,000 so no CFTA risk exists for Council. The value of the procurement was \$37,895.

Standing Offers

Standing Offers are procurement instruments which establish the qualifications of participants in order to create a list of Suppliers who are eligible to perform certain work at set prices, under terms and conditions defined in the Standing Offer documents. Using the ALTP #25 above for procurements that are above the high value threshold would require Council approval.

Server Replacement - The scheduled replacement of our storage server was scheduled for this fiscal 2021-2022 (\$60,000.00 budget), the replacement of our host servers was for last fiscal 2020-2021 (\$20,000.00 budget), and the next host server is scheduled for replacement next fiscal 2022-2023 (\$20,000.00 budget). We have been waiting for the release of the Provincial standing offer for these products as this is always price advantageous from what East Hants can get in the market going alone. The purchase of these servers are through IMP Solutions as they were awarded the Dell x86 Server Standing Offer through the Province of Nova Scotia (constitutes a “prior open competition”). The pricing is as follows:

Storage server: \$49,266.14

Host server (x2): \$14,794.47

Purchasing next years’ host server this year is recommended due to possible longer supply chain challenges that exist and recognizing the savings on the cost of the hardware through the standing offer. These servers have been ordered but should have had Council approve the ALTP prior to the order being placed.

Policy Alternatives

The intent of the clause was to give Council the responsibility to weigh in when we are considering ALP Practices such as sole source at high value (over \$25K for goods and over \$50K for services and construction) when there is additional risk from trade agreements or public procurement legislation (at the time NS provincial thresholds were lower). The risk from the CFTA trade agreement does not start until approximately \$105,000 for goods and \$252,000 for services and construction.

In order to manage the true risk of ALTP under the CFTA, the following wording would be recommended in Appendix A:

Replace: *“When the Procurement Value is below the High Value Threshold, the CAO may approve the use of Alternative Procurement Practices as follows. When the Procurement Value exceeds the High Value Threshold, approval to use the following Alternative Procurement Practices must be obtained from Council. Such Alternative procurement Practices may not be used when they conflict with trade agreement obligations.”*

With: *“When the Procurement Value is below the High Value Threshold and when the Procurement Value is between the High Value Threshold and the thresholds of the Canada Free Trade Agreement (CFTA) as they impact Municipal entities, the CAO may approve the use of Alternative Procurement Practices as follows. When the Procurement Value exceeds the High Value Threshold and the thresholds of CFTA as they impact Municipal entities, the risk of an ALTP with respect to the Trade Agreements must be assessed and approval to use the following Alternative Procurement Practices must be obtained from Council. Such Alternative Procurement Practices may not be used when they create significant risk of conflict with trade agreement obligations.”*

Alternatives

Council may choose not to change the Procurement Policy at this time.

Recommendation

It is recommended that Council ratify the two alternative procurement instances and make the recommended change to Appendix A of the Procurement Policy at the December meeting of Council.