

1.0 PURPOSE

The purpose of this Policy is to establish how the Municipality of the District of East Hants ("East Hants") will fulfill their obligations under the *Public Procurement Act, Nova Scotia*. This Policy is meant to inform Council, staff, Suppliers, and the public with respect to how East Hants will procure Goods, Services and Construction.

2.0 SCOPE

This policy has been designed to drive best value for the expenditure of public funds on the acquisition of Goods, Services and Construction through maximizing competition, adopting commercially reasonable business practices which reflect the needs of the citizens of East Hants, and conducting open, fair and transparent procurement processes.

East Hants is committed to:

- a) The procurement of Goods, Services, and Construction in a fair, open, consistent and transparent manner, resulting in best value for the Municipality;
- b) Identifying and using Suppliers who can be expected to provide satisfactory performance and best overall value to the Municipality;
- c) Continually improve the procurement process; and
- d) Promoting sustainable procurement.

East Hants will:

- a) Comply, to the best of our understanding, with all applicable regional, national and international trade agreements;
- b) Comply with the *Public Procurement Act*, SNS. 2011, c 12 and regulations made pursuant to the *Public Procurement Act*;
- c) Be accountable for our procurement decisions; and
- d) Avoid dishonesty, corruption and favoritism in the procurement of Goods, Services and Construction.

This Policy applies to the procurement by East Hants of all Goods, Services and Construction, but does not apply to procurements:

- a) Where a construction project is managed by a third party on behalf of East Hants, in which case the procurement for the project must be in accordance with the contract between East Hants and the third party;
- b) Which are made by a third party where East Hants is providing grants or other funding which pays for or contributes to payment for the procurement. East Hants may, however, make such funding contingent on meeting certain requirements with respect to procurement which are consistent with this Policy or other industry standard acceptable to East Hants.

The Chief Administrative Officer (CAO) of East Hants is responsible for ensuring compliance with this Policy.

All Municipal personnel who have responsibility for the procurement of Goods, Services, or Construction must adhere to this Policy. Failure to follow this Policy may result in a temporary or permanent loss of procurement privileges or, in more extreme cases, may result in disciplinary action and/or dismissal.

3.0 DEFINITIONS

For the purposes of this Policy, the following definitions are provided:

| Term | Definition |
|----------------------------------|---|
| Alternative Procurement Practice | <i>Alternative Procurement Practices</i> are the specialized or exceptional practices that allow for deviation from the procurement processes that the value or nature of the Goods, Services or Construction would normally require. This could include a non-competitive procurement in the place of a competitive process, and a limited competition in the place of an open competition. |
| Best Value | <i>Best Value</i> is determined by evaluating all of the factors which may affect the value to East Hants for the Goods, Services or Construction being procured. In some cases, Best Value will be limited to simple cost considerations; in other cases, East Hants will evaluate a number of pre-defined criteria which they will publish in the competition. Such criteria will often be looking to verify the capacity and capability of the supplier to deliver the Goods, Services, or Construction, but may also consider life-cycle costs, environmental considerations, social considerations, sustainability, delivery, quality, and other factors specific the procurement. |
| Bid | <i>Bid</i> means a supplier response to a competition document. This term is synonymous with the terms proposal, response, tender submission, quotation or offer. |
| Bidder | <i>Bidder</i> means a person, firm or corporation who submits a Bid. This term is synonymous with proponent, respondent, tenderer and similar terms used in the context of a response to a competition. |
| Competition | <i>Competition</i> is a general term referring to the various methods of procuring Goods, Services and Construction. Generally, this term will encompasses each of the various RFx types and is synonymous with the term solicitation |
| Competition Document | Also known as a solicitation document, this is the document used to solicit Bids from Bidders. |
| Construction | <i>Construction</i> means the construction, reconstruction, demolition, repair, or renovation of a building, structure, road, or other engineering or architectural work, excluding professional consulting services related to the construction contract unless they are included in the procurement (e.g. Design-Build). |
| Entrenched Incumbent | <i>Entrenched Incumbents</i> are suppliers whose Goods or Services are integral to the operation of East Hants and where change to or removal of the supplier would result in severe disruption to Municipal activities. To qualify, the potential change of supplier would not be advisable for economic or technical reasons AND would cause significant inconvenience or substantial duplication of costs to East Hants. |
| Goods | <i>Goods</i> means materials, furniture, merchandise, equipment, stationery and other supplies required by East Hants for the transaction of its business and affairs and includes services that are incidental to the provision of such supplies such as delivery. |

| Term | Definition |
|------------------------------------|---|
| Invitational Competition | <i>Invitational Competition</i> is a competitive process in which an invitation to submit bids is issued to at least three suppliers. |
| Life Cycle Cost | <i>Life Cycle Cost</i> is the sum of all costs associated with a Good or asset over its life span, including the cost of acquisition, maintenance, repair, operation, and disposal. |
| Limited Competition | <i>Limited Competition</i> is an Alternative Procurement Practice that may be used where the circumstances permit the procurement of Goods, Services or Construction through an Invitational Competition when an Open Competition would otherwise be required. |
| MASH Sector | <i>Municipalities, Academic Institutions, School Boards and Hospitals</i> . MASH sector entities, also known as the broader public sector, may use certain provincial resources for procurement, including Standing Offers. |
| Multi-Use Lists | <i>Multi-Use Lists</i> are a type of Standing Offer where specific Suppliers of certain Goods and Services are pre-qualified and added to a List. The Suppliers may then be contacted to provide the Goods or Services in accordance with the terms established in the Standing Offer document. <i>Municipalities, Academic Institutions, School Boards and Hospitals</i> . MASH sector entities, also known as the broader public sector, may use certain provincial resources for procurement, including Standing Offers. |
| Open Competition | <i>Open Competition</i> is the solicitation of bids through a publicly posted competition document. <i>Multi-Use Lists</i> are a type of Standing Offer where specific Suppliers of certain Goods and Services are pre-qualified and added to a List. The Suppliers may then be contacted to provide the Goods or Services in accordance with the terms established in the Standing Offer document. |
| Open Competition Thresholds | <i>Open Competition Thresholds</i> are the monetary values set out in the <i>Procurement of Goods, Services and Construction</i> section of this Policy above which Goods, Services or Construction are to be procured through an Open Competition. |
| Procurement Advisory Group | <i>Procurement Advisory Group (PAG)</i> means the advisory group established under the <i>Public Procurement Act</i> of Nova Scotia to provide advice and recommendations to advance the outcomes of the Act. |
| Procurement Governance Secretariat | <i>Procurement Governance Secretariat</i> is a secretariat established under Section 11(1) of the <i>Public Procurement Act</i> . |
| Procurement Plan | <i>Procurement Plan</i> is a comprehensive plan that must be completed for every major procurement defining the procurement activities necessary to achieve the outcomes the plan specifies. |
| Procurement Value | <i>Procurement Value</i> is the value of the total contract excluding taxes but including all options whether exercised or not. In service contracts this value is determined by the maximum fees payable over the term of the contract (monthly rate times the total number of months in the term, including option years, for example). For facilities, this value is determined by the monthly lease/rent times the term of the contract. |
| Procurement Web Portal | <i>Procurement Web Portal</i> means the public website where all public tender notices are posted. Such Public Web Portals includes the Nova Scotia Procurement Web Portal which is maintained by the province of Nova Scotia and on which East Hants will advertise every Open Competition. |
| Public Advertisement | <i>Public Advertisement</i> means advertising a public tender notice on the Procurement Web Portal. |

| Term | Definition |
|-------------------------|---|
| Supply Arrangement | A <i>Supply Arrangement</i> is a type of contract where a rate is established with a specific supplier for a specific period of time for certain Goods or Services. Similar to a Multi-use List, there is no guarantee how often the Good or Service will be required. |
| Services | <i>Services</i> means those services required by the Municipality of East Hants for the transaction of its business and affairs, excluding services provided by an employee through a contract of employment/service, as per Canada Revenue Agency guidelines. |
| Single Source | A <i>Single Source Procurement</i> is an Alternative Procurement Practice in which two or more suppliers can supply the goods and/or perform the services required by East Hants, but where East Hants selects one supplier over the others for reasons such as expertise, previous municipal or other related experience and <u>not</u> through a competitive process. |
| Social Considerations | <i>Social Considerations</i> are factors associated with the purchase or manufacture of a product or asset that relate to the rights or interests of the workers involved, such as working conditions, fair wages, and compliance with human rights legislation and conventions |
| Sole Source Procurement | A <i>Sole Source Procurement</i> is an Alternative Procurement Practice in which it is evident that <u>only one Supplier</u> can supply the Goods and/or perform the Services required by East Hants and an award is made to that Supplier. |
| Standing Offer | A <i>Standing Offer</i> is a continuous offer of rates from a pre-approved supplier to supply Goods and/or Services, as requested, through the use of a call-up process during a particular period of time, at a predetermined price or discount, generally within a pre-defined dollar limit. Types of Standing Offer include Multi-Use Lists (multiple suppliers). Also known as a solicitation document, this is the document used to solicit Bids from Bidders. |
| Supplier | A person carrying on the business of providing Goods, Services or Construction. |
| Sustainable Procurement | A holistic approach to government procurement that considers the environmental, economic and social factors related to the Goods, Services and Construction that are procured. |

POLICY

4.0 INTENT

East Hants acknowledges that the taxpayers expect and have the right to receive quality Goods and Services at a reasonable cost and that all Goods, Services and Construction will be procured based on sound management and public procurement practices.

Procurement methods must be open, fair, transparent and consistent, while being both efficient and effective; procurement methods and processes should reflect the need to make decisions in a timely fashion, for those decisions to stand up to public scrutiny, and to make best use of staff time when making such decisions.

5.0 PROCUREMENT PLANNING

Planning is essential to ensuring effective results and limiting risk. The Director of the department considering a procurement, when setting their budgets, are responsible to complete a procurement plan for each procurement they put forward, in accordance with the Procurement Guidelines.

6.0 PROCUREMENT OF GOODS, SERVICES AND CONSTRUCTION

East Hants must procure Goods, Services and Construction over \$10,000 in accordance with the following tables. The amounts shown are exclusive of HST (15%), whether or not some portion of the taxes might be reimbursable.

| Spending Category | LOW VALUE | | HIGH VALUE |
|-------------------|------------|--------------------------|--------------------|
| | Quotations | Invitational Competition | Open Competition |
| Goods | <\$10,000 | \$10,000 - \$24,999 | \$25,000 and above |
| Services | <\$10,000 | \$10,000 - \$49,999 | \$50,000 and above |
| Construction | <\$10,000 | \$10,000 - \$49,999 | \$50,000 and above |

Dividing procurement activity to reduce or keep the procurement value below certain thresholds is not permitted.

6.1 Low Value Procurement

If the value of the Goods, Services or Construction are less than \$10,000:

Staff are expected to obtain competitive quotations wherever possible and award to the bid that provides the best value. For Goods, Services or Construction below \$10,000, the minimum of three quotations is not mandatory, however Staff are expected to use due diligence in selecting such Suppliers, including obtaining quotations in cases where there are sufficient Suppliers to do so, where there is sufficient time to do so, and when the value of the Goods, Services or Construction makes it practical to do so.

If the value of the Goods, Services or Construction is \$10,000 and over but less than Open Competition thresholds:

The acceptable process is to use an Invitational Competition. All Invitational Competitions must be conducted in accordance with the Procurement Guidelines and are subject to review by the Procurement Officer prior to issue.

6.2 High Value Procurement

If the value of the Goods, Services or Construction is above Open Competitions thresholds, staff must work with the Procurement Officer to conduct a public competitive process. Open Competitions are posted on the Nova Scotia Procurement Web Portal.

All Open Competitions must be conducted in accordance with the requirements of this Policy. In all circumstances, the Procurement Officer must review and approve the final Competition Document before an Open Competition is initiated.

If an Invitational Competition is issued and the results demonstrate that the cost from the lowest bidder or highest-rated respondent is above the High Value Procurement threshold, the CAO may, at their discretion:

- Cancel the competition and not award;

- Accept the result and award. The resulting award is a Non-Competitive Alternative Procurement Practice; or
- Reject the result and require that the Competition be re-issued as an Open Competition.

6.3 Sustainable Procurement

The Procurement Officer, staff and Directors are to use their expertise in their functional area to identify opportunities to specify requirements which maximize the economic, environmental, and social value of purchases. Where possible, specifications are to encourage the use of sustainable products, work methods, and business practices.

6.4 Public Competitions

Public competitions will be conducted using methods and templates appropriate to manage risk, comply with the requirements of this Policy and to ensure best value, in accordance with the Procurement Plan. The Procurement Guidelines will provide an overview of available templates and services related Public Competitions.

6.5 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 describes the Alternative Procurement Practices which are acceptable and the circumstances in which they are permitted to be used.

6.6 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. East Hants may establish their own Standing Offers through an Open Competition, however each Standing Offer must contain the following elements in order for it to comply with treaty obligations and remain valid:

- A secondary competitive element whereby the pre-qualified Suppliers provide information prior to selection for a job (e.g. a lump sum price, lead-time, or other consideration which provides best value in that instance); or
- A fair and transparent method of consecutive selection whereby Suppliers are selected in rotation (e.g. next in line). Such methods may be coupled with a response criterion for situations where urgent response is required (e.g. failure to answer loses spot in rotation); and
- Establishes the minimum requirements and the method of qualifying Suppliers that will be used;
- The qualification process remains open for the duration of the Standing Offer (continuous), allowing Suppliers to apply at any time or during pre-defined windows;
- All entities who may have access to use the Standing Offer are identified. This list may be updated over the course of the Standing Offer;
- The maximum value per instance the Standing Offer is used is established in the documentation of the Standing Offer; and
- The maximum accumulated value (including identified entities) for the duration of Standing Offer is estimated and published in the initial competition.

East Hants may participate in provincial Standing Offers where participation by the Municipality of East Hants or the MASH-sector has been expressly allowed as part of the terms and conditions of the Standing Offer.

East Hants may also establish Supply Arrangements, an instrument similar to a Standing Offer but where East Hants enters into an agreement with one Supplier to complete certain Services on an “as needed” basis, with no guarantee that any Services will be required. Supply Arrangements are “Closed”, meaning no other participants can be added during the term. The Arrangement does not, however, prevent East Hants from obtaining such Services from other sources if so required. Like any other procurement, a Supply Arrangement must be procured in accordance with the requirements of the threshold in which the estimated value of the Services falls. The maximum term for a Closed Supply Arrangement is three years before it must be opened to additional Suppliers.

Unless approved in advance by the CAO or by exception in the Policy, East Hants may use Standing Offers for Goods, Services and Construction up to maximum Low Value limit in each instance of use. Such use complies with this Policy and is not an Alternative Procurement Practice.

Standing Offers may not exceed five years in total duration.

East Hants may exceed the Low Value limits when using a Standing Offer established by Province of Nova Scotia for the following commodities, but only with the prior written permission of the CAO.

- The purchase of Vehicles (e.g. trucks)
- The purchase of telephone or internet services, no matter how they are delivered
- The purchase of software, in particular SAP components or modification to the same

Where such Standing Offers become available to East Hants, East Hants may also purchase from Federal Standing Offers provided they have signed an agreement with the Province to obtain access to the Standing Offer and agree to abide by the conditions of the agreement.

6.7 Architects and Professional Engineering Services

East Hants recognizes that certain professional services, such as design services, may have a significant influence on a project’s subsequent construction, maintenance and operations costs. The extent of this influence is often disproportionate to the direct price of the professional services procured. East Hants further recognizes that there are a variety of different methodologies, including Qualifications Based Selection (QBS), which can be used to recognize quality over cost.

Therefore:

- East Hants may, in their sole discretion and where reasonable to do so, emphasize the recognition of skill, qualifications and expertise in their competitive processes by limiting the value of cost as a factor of award and by using elimination methods to prevent Suppliers who do not meet minimum qualification requirements from being considered for award; and
- Where, in East Hants’ opinion, the qualification requirements are minimal or where, in the case of Invitational or Selective Bidding, the qualifications of the Supplier have been considered prior to inviting the Supplier to bid, East Hants believes it is reasonable to weigh cost more heavily in their evaluation; and

- East Hants will determine, in their sole discretion, the relative weight of cost to qualification, but will consider carefully the complexity of the services being performed, the quality of the end product required, and the implications of errors, omissions and delay.

Note: East Hants does not typically accept limitation of liability clauses in contracts for professional engineering, architectural and consulting services.

6.8 Unsolicited Proposals

Where an unsolicited proposal is received by the Municipality as is deemed to warrant further investigation, the proposal may, at the discretion of the CAO, be evaluated using the provincial *Procurement Process: Submission & Evaluation of Unsolicited Proposals* located on the provincial website (www.novascotia.ca).

6.9 Cooperative Procurement

Municipal personnel are encouraged to look for opportunities to collaborate with other municipalities or government agencies when the arrangement may result in overall cost savings or other substantial advantages. Examples of cooperative procurement may be for commonly used and standardized goods, services, fuel oil, natural gas, telecommunications, etc.

Such cooperative events must be clear as to which entities are participating and must reflect, as accurately as possible, the anticipated spend by each entity over the term of the cooperation.

6.10 Multi-Year Contracts

Where deemed appropriate by the CAO, procurement may be completed for contracts with a multi-year term, such as service contracts like curbside collection and snow and ice control. The total term for such contracts may not exceed five years and the overall estimated value of the contract, including all terms, will determine the procurement method to be used. In addition:

- Providing for a cost of living, fuel surcharge or other price escalation clause is permissible
- The use of provisional terms (e.g. 2 years plus an additional term of one year based on satisfactory performance) is acceptable provided the entire term will not exceed five years

A term longer than five years may be considered where a longer duration is necessary to meet the specific outcomes of the service, such as to offset the capital costs related to the Goods, Services or Construction being purchased or where the Goods or Services form part of, or serve to, support assemblies or services with a life-span of longer than five years (e.g. certain software arrangements). Such cases must be well documented and must demonstrate, to the satisfaction of the CAO, that all other reasonable alternatives have been researched. Procurements where the Term is longer than five years must be approved in Council.

In the event there is a resource constraint affecting the ability to take the Goods, Services, or Construction back out to market prior to the expiry of an existing contract, the CAO may provide for an short extension to an existing contract sufficient to develop competition documents and run a procurement process.

6.11 Permanent Exemptions

Individual departments may apply to the CAO for a permanent exemption from the Procurement Policy for Goods or Services where the provisions of this policy cannot be applied or where it can be demonstrated that each instance of procurement for those Goods or Services will only be possible using Alternative Procurement Practices.

The process for applying for this exemption shall be outlined in the Procurement Guidelines. The list, if any, of permanent exemptions will be made available to Council on an annual basis and will be available through routine access to information.

The list of Permanent Exemptions must be reviewed by the CAO every five years to ensure the reasons for the exemption are still valid; if the reasons are found to be invalid, the Department responsible for the Goods or Services must plan to procure such Goods and Services as per this Policy in the next instance they are required.

6.12 Emergency Situations

In an emergency situation the CAO is authorized to make reasonable and informed procurement decisions which they determine to be necessary to protect the legal interests or to satisfy the legal obligations of East Hants, or which involve a situation where failure to act could reasonably be expected to compromise Municipal confidentiality, cause economic disruption, or would otherwise be contrary to the public interest.

Activation of the Emergency Coordination Centre (ECC) is an example of a clear emergency situation. The CAO may delegate some or all of their procurement authority to the ECC Commander, or Alternate ECC Commander, when they may not be able to perform those duties themselves.

Emergency situations will be reported to Council.

7.0 BID OPENING, EVALUATION, AWARD AND SECURITY

7.1 Bid Closing and Opening

Bids are accepted in accordance with the closing time, date, and place stipulated in the Competition Documents.

East Hants has designated an **official clock** which establishes the closing time for all formal competitions requiring a physical submission. A response is not received until such time as an imprint of the date and time is recorded from the official clock.

7.2 Bid Evaluation

All Bids are subject to evaluation after opening and before award of contract. The Competition Documents must clearly identify the requirements of the procurement, the method used to evaluate the responses and the evaluation criteria that will apply.

- a) Mandatory or minimum qualifications may be used as an evaluation factor in a price-based competition where it is reasonable to believe that absence of such qualifications will affect the performance of the work or the expected outcome.

- b) Where scoring is used as the method for evaluating the results of a competition, such scoring may be done by independent (individual) scoring that is then averaged or by consensus (individual scoring followed by a group meeting to come to consensus around the score to be applied). Presentations will typically be scored by consensus.
- c) Compliance requirements may be scored on a pass/fail basis provided the requirements are applied equally and fairly to all bidders. The inclusion of compliance requirements must be to achieve a legitimate outcome and may not be designed to limit competition to exclude Suppliers who would otherwise be qualified to provide the Goods, perform the Services or complete the Construction required. Financial requirements such as bonding and surety, insurance requirements, Workers Compensation requirements, professional qualifications and designations will not be considered by East Hants to be exclusionary if they are able to be obtained by bidders from other jurisdictions and not exclusive to East Hants residents, Nova Scotia entities or Canadian entities.
- d) When evaluating for highest score or Best Value for competitions above the Low Value thresholds, East Hants will publish a list of the criteria it will use when evaluating and the relative weight of each criterion.

7.3 Award

East Hants will make every reasonable effort to publish information related to Competitions in accordance with the province "Release of Information Protocol".

In the event an award is made as a result of Alternative Procurement Practices and is above the thresholds established in the CFTA trade agreement, East Hants will publish the award information, in accordance with CFTA requirements for such postings, on the Nova Scotia Tendering Portal.

Below is a list of Information East Hants will typically, at their sole discretion, disclose based on the type of Competition:

| Competition Type | Posting | Comments |
|---|--|---|
| Request for Quotation | Supplier Name and Total Price | When price only features Unit Rate(s) and not a Total or Estimated Contract Price, no Price will be published or released. |
| Request for Proposals; Tenders | Supplier Name and Total Price | Total price will not be broken down |
| Supply Arrangement | Supplier Name and Estimated Price (if calculated for evaluation) | If pricing is estimated for evaluation purposes, the Supplier's total estimated price may be published, but with a note stating there is no guarantee the usage will accumulate to that value |
| Request for Standing Offer: Multi-use Lists | Supplier Name(s) Only | RFSOs do not guarantee how much, if any, work may be contracted, no pricing information will be published |
| Request for Construction (Tender) | Successful Bidder Name and Total Price | Total Price will not be broken down |

| | | |
|---|--|---|
| Publicly Opened Competitions (including Tenders) | Bidders and Unverified Prices | East Hants may, at their discretion, publish a list of Bidders and Bid Prices after opening. Bid Prices are subject to correction, but will not be broken down. |
| Requests for Expressions of Interest | Successful Supplier(s) | Only if a shortlist is created as a result |
| Requests for Qualification | Qualified Bidders | Only the names of those Qualified |
| Request for Information | None | No criteria are weighed and there is no expectation of award |
| Awards under Alternative Procurement Practices | Date, Supplier Name, Circumstance, and Total Price | Any additional information required as part of our trade treaty obligations, to the extent East Hants are able |

7.4 Bid & Contract Security

East Hants will use Bid and Contract Security to mitigate risk in their procurement process. The requirement for security will be established in the bid documents issued to the public. The amount of security required will be determined in accordance with the *Administrative Procurement Policy*.

7.5 Contract & Risk Management

Section 12 (g) of the *Public Procurement Act* requires Municipal personnel to adopt contract and risk-management guidelines. These guidelines shall be established by the CAO.

7.6 Supplier Debriefing

Bidders may request a debriefing of their submission once the competition is closed, but East Hants is not obligated to provide a debriefing if the request is later than 30 days after notification the Bidder has not been successful. When requested, debriefings must be scheduled and conducted in accordance with East Hants' debriefing process.

7.7 Supplier Complaint Process (SCP)

The availability of a Supplier Complaint Process is an integral part of a fair and open procurement policy. When a Supplier is not satisfied with the methods of procurement used by the Municipality, the Supplier is encouraged to file a formal complaint with the Municipal Clerk who shall commence an internal review of the process. The Municipal SCP is outlined in Appendix C of this Policy.

If the supplier is not satisfied with the result of that review, the *Public Procurement Act*, Section 18, outlines an independent Supplier Complaint Process. The SCP is not a dispute resolution process, but rather is intended to hold public sector entities accountable for using procurement methods consistent with the purpose of the *Public Procurement Act*.

In the event there is a dispute involving a procurement which is subject to the requirements of a trade treaty, East Hants will comply with the complaint mechanisms applicable to that treaty.

7.8 Legal Services

The CAO has the authority with respect to routine legal issues to determine when specialized advice is required and to obtain such Services. The procurement of such services is dependent on the need and skill set of the providers to which East Hants has access and therefore will not be competitively obtained.

7.9 Workers' Compensation

The requirement for workplace insurance is described in the "WCB Requirements for Contractors & Sub-Contractors" Policy.

7.10 Supplier Disqualification

Suppliers may be disqualified from participating in future procurement opportunities if it can be reasonably documented to the satisfaction of the CAO that any one of the following have occurred:

- Supplier has failure to honour a bid, whether or not East Hants has called a bond
- Supplier has failed to disclose a conflict of interest
- Supplier has demonstrated unethical bidding practices which can be documented
- Supplier has been convicted of bid rigging, price fixing or collusion
- Supplier has had a contract terminated as a result of a performance or quality issue documented by East Hants
- Supplier did not provide acceptable Goods or Services during the term of the contract and despite East Hants' documented efforts to obtain improved performance, the supplier continued not to perform. The potential for disqualification from future contracts must have been discussed with the Supplier as part of performance management

Supplier disqualifications must occur at the time the issue is identified and may not be applied retroactively. Once a disqualification has been approved, the supplier must be informed of the disqualification, including:

- Reason for disqualification, with summary of evidence supporting the decision
- Term of disqualification
- Appeal date and appeal process

Suppliers may appeal their disqualification after one year and must demonstrate that they have made significant changes to their organization to resolve the issues which resulted in their initial disqualification. Acceptance of an appeal will be at the sole discretion of East Hants.

8.0 LOCAL PREFERENCE

8.1 Local Goods

Section 13 of the *Public Procurement Act* allows for preference to be given to suppliers of Goods which are manufactured or produced in the Province when the value of the procurement is below the \$25,000 threshold.

Therefore, below the Low Value procurement threshold, Municipal personnel (with the authorization of the CAO) may:

- Choose to apply a Nova Scotia preference to the procurement of Goods;
- Restrict the receipt of Invitational Competitions to Nova Scotia suppliers;
- Accept, reject, consider, and evaluate Bids from other jurisdictions on the same basis that the purchasing authority's jurisdiction would treat a Bid from a Nova Scotia Supplier.

8.2 Services to be Delivered in East Hants

For Services and Construction being procured within the thresholds for Invitational Competitions, Municipal personnel may restrict Invitational Competitions to Suppliers headquartered in Nova Scotia, but not at the expense of obtaining the most qualified responses, sufficient responses in the event there are few suppliers in Nova Scotia, or, in the event that there are a number of suppliers in Nova Scotia but these suppliers have no capacity to respond to our need, the best value for the services.

8.3 Trade Treaties

Local preference may not be applied to procurements subject to the CFTA or CETA trade treaties.

9.0 SUSTAINABLE PROCUREMENT

Sustainable Procurement involves taking a holistic approach to obtain best value for the Municipality. Where possible and where it is in the best interest of the Municipality to do so, Municipal personnel may integrate the following considerations in the procurement process:

1. Environmental considerations: e.g. Green House Gas Reduction, Waste Reduction, Toxic Use Reduction
2. Economic considerations: e.g. Life Cycle Cost, Fiscal Responsibility, Support for the Local Economy
3. Social considerations: e.g. Employee Health and Safety, Inclusiveness and Fair Wage, Health Promotion

All Open Competition documents must list criteria with respect to sustainability if they are being applied to that competition.

10.0 OTHER CONSIDERATIONS

In addition to the areas already covered by this Policy, the following are additional obligations of the Public Procurement Act that the Municipality is required to adhere to with municipal procurement practices.

10.1 Code of Ethics

Municipal personnel and Councilors must ensure their conduct in relation to procurement activity is consistent with the duties of public sector employees as outlined in the *Public Procurement Act*. This includes a request for removal from a procurement activity when a personal conflict of interest exists or may be perceived to exist.

All Municipal personnel involved with public procurement shall be familiar with the Competition Bureau of Canada bid rigging awareness and prevention guidelines and the Municipality shall adopt applicable practices supporting these guidelines.

Pursuant to section 15 (1) of the *Public Procurement Act*, all employees involved in procurement on behalf of the Municipality must:

1. ensure their procurement activities are conducted according to policies, provincial and federal legislation, trade agreements and ethical business practices;
2. encourage and support collaborative procurement amongst public sector entities;
3. follow leading procurement practices;
4. in good faith, conduct business with current and prospective Suppliers and be fair in all business dealings;
5. strive to obtain the best value for each expenditure;
6. require Suppliers provide accurate representations of Goods, Services and Construction;
7. encourage Suppliers to consider sustainability in their product or service offerings;
8. encourage the negotiation of an equitable and mutually acceptable settlement when a dispute arises; and
9. request removal from a procurement process when a personal conflict of interest is perceived.

10.2 Posting this Policy

A copy of the Procurement Policy must be posted on the Municipality of East Hants public website.

10.3 Supplier Development Activities

Municipal personnel will make every reasonable attempt, where appropriate, to participate in supplier outreach activities conducted by the Procurement Governance Secretariat.

In an effort to ensure that potential sub-Contractors have an opportunity to promote themselves to prime Contractors who may bid on work for the Municipality, East Hants may publish the names of those companies and individuals who register to receive competition documents on their website. East Hants will not publish contact information or other information provided by companies or individuals, unless compelled to by law, and a company may request their name be removed from the list at any time. East Hants will comply with requests to remove a Bidders' name at their soonest convenience. Lists are no longer available once a competition closes, but may be obtained by contacting the Procurement Officer or the CAO.

10.4 Regulations and Guidelines

The CAO will ensure procurement practices remain consistent with any regulations that are adopted under the *Public Procurement Act*.

The CAO will ensure a full set of Procurement Guidelines are in place to guide municipal staff in procuring Goods, Services and Construction in compliance with the *Public Procurement Act* and related regulations, this Policy and with industry standards.

10.5 Reporting

In compliance with section 12 (k) of The *Public Procurement Act* the Municipality shall submit all legislated reports to the Provincial government with respect to procurement policies and activity.

It is the responsibility of the CAO to ensure any reporting to Council under the policy is done in a timely manner. Reports for information will be posted to the Council web site and presented to Council upon request by Council.



11.0 AMENDMENTS

This Policy may be amended from time to time with the approval of Municipality of East Hants' Council. Such amendments will be communicated to the public on the East Hants website.

12.0 COMPLIANCE

All staff and Councilors must act in good faith to comply with this Policy, but failure to comply with the Policy does not invalidate any procurement decision or act of the Municipality, nor is East Hants liable to any supplier or perspective supplier for failing to comply with the Policy.

ROLES AND RESPONSIBILITIES

| Title/Role | Responsibilities |
|----------------------------------|---|
| Policy Owner | The policy owner (see Version Log Section) is responsible for ensuring that the policy is implemented and being followed. In addition, the policy owner is responsible for reviewing the policy on a yearly basis for relevancy and potential updates. |
| Municipality of East Hants Staff | All personnel that fall within the scope of this policy (see Scope Section) must follow the policy statements within this document and must follow the governing authority of the policy owner. |
| Procurement Officer | <ul style="list-style-type: none">Facilitate the implementation of the Policy, including the Open and Invitational procurement processesSupport procurement at all thresholdsDevelop and provide procurement templates and toolsPeriodically review procurement practices in the province and other jurisdictions to ensure:<ul style="list-style-type: none">Alternative Procurement Practices and related circumstances remain compliant and in accordance with the applicable provincial regulation and trade treaty obligationsReview the use of ALTP Practices in High Value procurement situations for impact to obligations under trade agreementsFacilitate review of Competition Documents, when required, by provincial or third party subject matter experts (legal, insurance, trade specialists). |

VERSION LOG

| Version Number | Amendment Description | Amendment/Policy Owner | Approved By | Approval Date |
|----------------|---|------------------------------|-------------|-----------------------------------|
| 1.0 | Creation of Procurement Policy in compliance with the Public Procurement Act. Split old policy between a Procurement Policy and the Budget Management Policy. | Chief Administrative Officer | Council | September 26 th , 2012 |



| Version Number | Amendment Description | Amendment/Policy Owner | Approved By | Approval Date |
|----------------|--|------------------------------|--------------|---|
| 1.1 | Document # added; add Bidder names policy statement; add legal services policy statement; add WCB Policy statement; clarification around sole and single source approval requirements. | Procurement Officer | CAO; Council | September 2014 |
| 2.0 | To update address in the document and correct hyperlinks which are unavailable or have changed | Chief Administrative Officer | Council | July 4, 2018 |
| 3.0 | Updated to align with current Nova Scotia Procurement Policy and to account for changes in trade agreements that apply to Municipal entities. Most sections are affected; major changes are to thresholds where Low Value maximum for Services and Construction increased to \$49,999, Alternative Procurement Practices, and Supplier Complaints Process. | Procurement Officer | Council | December 19, 2018 to be effective on February 1, 2019 |
| 4.0 | Changed pre-amble to Appendix A from the following as per Council approval December 22, 2021: "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." | Procurement Officer | Council | December 22, 2021 |
| 5.0 | Increase the threshold between where Quotations are required and an invitational Competition is required from \$5,000 to \$10,000 | Procurement Officer | Council | January 29, 2025 |

CERTIFICATION

I, Kim Ramsay, Municipal Clerk of the Municipality of East Hants, hereby certify that this policy was duly approved.

Kim Ramsay
Municipal Clerk

APPENDIX A - ALTERNATIVE PROCUREMENT PRACTICES

Alternative Procurement Practices must not be used to avoid competition between Suppliers or to discriminate against specific individual or groups of Suppliers.

The use of Alternative Procurement Practices must be authorized by the CAO prior to the Department engaging in an Alternative Procurement Practice. The Department wishing to use ALTP must complete a report documenting the rationale for using the Alternative procurement practice; this report must demonstrate justification for use of the ALTP to the satisfaction of the CAO. The report must be accompanied by a properly completed PP-05 form.

In the case of Low Value procurement where ALTP are considered, the PP-05 form, in the CAO's sole discretion, may contain sufficient information to eliminate the need for an additional report.

Alternative Practices

LIMITED COMPETITION

A Limited Competition involves the use of an Invitational Competition instead of an Open Competition where the value of the procurement exceeds the Open Competition Thresholds. A Limited Competition should be used where the circumstances surrounding the procurement do not allow for an Open Competition in accordance with one or more of the ALTP justifications set out below, but the circumstances could allow for an Invitational Competition.

NON-COMPETITIVE PROCUREMENT

Sole Source and Single Source procurements are examples of a Non-Competitive Procurement. The justification for use of a Non-Competitive Procurement must be made clear by the Department recommending the Alternative Procurement Practice. As such use gives significant advantage to the Supplier, a proper negotiation strategy must be considered prior to award.

Other

AWARD NOTIFICATION

After a contract has been entered into for a Limited Competitions or high value Non-Competitive procurement, Procurement will post the name of the successful Supplier and the value awarded on the Nova Scotia Procurement Web Portal as is required under applicable trade agreements.

UNSOLICITED PROPOSALS

Any unsolicited proposals received will only be considered in the context of ALTP Justifications found in the following section.

ALTP JUSTIFICATIONS

The CAO may authorize Alternative Procurement Practices in the circumstances described below for the procurement of Goods, Services, or Construction at any threshold.

1. Insofar as is strictly necessary where, for reasons of urgency brought about by events unforeseeable by East Hants, the Goods, Services or Construction could not be obtained in time using an open competition



2. Where Goods or Services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open competition could reasonably be expected to compromise confidentiality, result in the waiver of privilege, cause economic disruption, or otherwise be contrary to public interest
3. To ensure compatibility with existing products, or to maintain specialized products that must be maintained by the manufacturer or its representative
4. To ensure the protection of patents, copyrights, or other exclusive rights
5. Due to an absence of competition for technical reasons
6. For the procurement of Goods or Services the supply of which is controlled by a supplier that is a monopoly
7. For Goods purchased on a commodity market
8. For work to be performed on or about a leased building or portions thereof that may be performed only by the lessor
9. For work to be performed on a property by a Contractor according to provisions of a warranty or guarantee held in respect of the property or the original work
10. Where a procuring entity procures a prototype or a first good or service that is developed in the course of, and for a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs.
11. For purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchase from regular suppliers.
12. The requirement is for a work of art
13. Where a contract is awarded to a winner of a design contest provided the contest has been organized in a manner consistent with the principles of this Policy, in particular related to the publication of tender notices; and the participants are judged by an independent jury with a view to a design contract being awarded to a winner.
14. For the procurement of subscriptions to newspapers, magazines, or other periodicals
15. For additional deliveries by the original supplier of Goods, or Services that were not included in the initial procurement where a change of supplier for such additional Goods, Services or Construction cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement, and would cause significant inconvenience or substantial duplication of costs for the public sector entity
16. No bids were submitted or no suppliers requested participation; no bids that conform to the essential requirements of the solicitation documentation were submitted; no suppliers satisfied the conditions for participation

17. For the procurement or acquisition of fiscal agency or depository services, liquidation, and management services for regulated financial institutions or services related to the sale, redemption, and distribution of public debt, including loans and government bonds, notes and other securities
18. For the procurement of Goods and Services for commercial sale or resale, or for use in the production or supply of Goods or Services for commercial sale or resale
19. For the procurement of Goods and Services financed primarily from donations that are subject to conditions that are inconsistent with this Policy
20. Procurement of Goods or Services from another government body
21. Procurement from philanthropic institutions, non-profit organizations, prison labor, or persons with disabilities
22. Compliance with the competitive process requirements would interfere with East Hants' ability to maintain security or order or to protect human, animal, or plant life or health
23. The procurement supports a measure adopted with respect to Aboriginal peoples

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.

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 reasonably 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.

APPENDIX B - SUPPLIER COMPLAINT PROCESS (SCP)

General:

The Supplier Complaint Process is a method to address supplier complaints and to improve East Hants's procurement process; it is an integral part of a fair and open procurement policy. The following procedures facilitate these objectives, allowing the municipality to handle complaints in an organized, consistent manner, and to carry out the analysis and reporting requirements in order to improve upon the procurement process.

A Complaint means a written objection submitted by a participant in a competitive process for Goods, Services or Construction. A participant is limited to a Supplier who actually submitted a response to the Competition process to which the Complaint applies; non-participants may still submit comments, however such comments are not applicable to this process.

Supplier concerns or questions with respect to a specific Competition are to be submitted to the East Hants representative identified in the Competition Documents prior to the close of the Competition and, where applicable, prior to the last date and time for questions. Failure to identify an issue with a Competition Document prior to the close of the Competition does not prevent a Supplier from filing a Complaint, but it does severely limit East Hants' ability to address or rectify the issue that is subject to the Complaint.

East Hants may, when confronted with concerns with respect to an on-going Competition, either respond by addendum to rectify the issue or to clarify our intent, or East Hants may cancel the Competition to correct the issue in a more fulsome way.

The following are best addressed during the Competition:

- specifications that are seen as vague or incomplete
- bid preparation time too short to properly reply
- specifications perceived as unfair, predetermined, or arbitrary
- procurement process unclear or perceived as discriminatory
- apparent violation of an applicable trade agreement

A Supplier must request and participate in a debriefing prior to engaging in the Supplier Complaint Process. A Supplier that is not satisfied with the results of a debriefing may file a Complaint.

Suppliers may make Complaints about procurement matters to which they are not a party only in the following circumstances:

- In the event of a Non-Competitive Award or award decided by Selective Invitation where they are a Supplier who would have been capable of responding but was not given the opportunity
- In the event of an apparent conflict with a trade treaty or Policy which could only be discovered after award and where the conflict, had it been apparent, would have resulted in a Supplier submitting a bid.

East Hants recognizes that Complaints with respect to trade compliance may require additional processes which are not covered in this Supplier Complaint Process. East Hants will update their process as necessary to comply with their trade obligations as part of the MASH sector and will otherwise comply with jurisdictions having authority in responding Complaints with respect to trade treaties.

The Supplier Complaint Process is meant to provide an opportunity for Suppliers to voice Complaints and to assist East Hants in identifying any gaps or shortcomings in its procurement policies and practices. The process is intended to help resolve issues that involve no significant factual or interpretive disagreement between the parties. It is not intended to resolve fundamental disputes over facts or legal rights and obligations or to establish a mechanism to adjudicate such disputes.

The Supplier Complaint Process will not, under any circumstances, result in any contract award being set aside by East Hants.

Process:

A Supplier who wishes to file a Complaint must do so by submitting their Complaint, in writing, to the Municipal Clerk, to the following address, within ten days from notification of award of a contract.

Municipality of East Hants
Box 230, Suite 170
15 Commerce Court
Elmsdale, NS B2S 3K5

Attention: Municipal Clerk - Supplier Complaints

The request must include:

- A clear statement as to which procurement the Supplier wishes to file a complaint. This must include the Competition number beginning with RF (Ex: RFC50001).
- A clear explanation of the Supplier's concerns with the procurement, including specifics as to why they disagree with the procurement process or its outcome
- The Supplier's contact information including name, phone number and email address.
- A description of the actions the Supplier would like East Hants to take

The Municipal Clerk will:

- Review the complaint
- Within ten business days' of receipt of a Complaint provide the Supplier with a confirmation that the Complaint has been received
- Within 25 business days' of the acknowledged receipt of the Complaint, provide a written response to the Supplier with respect to the Complaint

Upon receipt of a Complaint, the Municipal Clerk shall review the Complaint to determine if further action is appropriate. A Complaint may be dismissed without further consideration, where in the opinion of the Municipal Clerk, the Complaint:

- on its face is frivolous or invalid
- the complainant is not a participant in the competitive process (i.e. did not submit a bid)
- is made more than 10 working days after a notice of a contract award, or
- is otherwise inappropriate for consideration.

If the Complaint is not dismissed, the Municipal Clerk will contact the Procurement Officer to determine if the Complaint has already been addressed. If not, the Municipal Clerk will perform an investigation into the Complaint. The Municipal Clerk may delegate the investigation of a Complaint to the Deputy CAO or undertake the investigation themselves.

The investigation may include conducting interviews with Procurement Officer and applicable department staff and may include, if the Municipal Clerk deems necessary, a meeting with the complaining party. The Municipal Clerk will review the results of the investigation and determine if, in their opinion, there is merit in the complaint and may, if they are satisfied there is no merit, may prepare a written response to the Complaint to be sent to the Supplier. The written response may include consideration of the merit of the Complaint, but must include a list of actions taken by East Hants, if any, as a result of the review.

If the Municipal Clerk deems it necessary, legal counsel may be sought prior to responding to the Complaint in writing.

In the event that the results of the investigation suggest that the Complaint may have merit, the Municipal Clerk may convene an Internal Review Committee (IRC) to review the Complaint and the results of the investigation prior to providing a formal response to the Supplier.

Members of the IRC must:

- Not have been part of the original procurement which resulted in the Complaint
- Must identify any conflict of interest in the matter
- Must review the results of the investigation impartially, as a group, and seek clarification when necessary

Upon review of the Complaint, the IRC has two options:

- If the IRC is satisfied that the Supplier's rationale for requesting a review is without merit, the IRC advises the Municipal Clerk of their opinion. The Municipal Clerk will confirm to the Supplier, in writing, that the IRC has reviewed its concerns and that the IRC is of the opinion that the complaint is without merit
- If the IRC finds that the Supplier's complaint may have some merit, an appropriate response will be prepared and submitted by the IRC to the Municipal Clerk who will incorporate their findings in their response.
- The IRC may include recommendations in their response as to changes to the procurement process they feel are necessary to prevent a reoccurrence of the Complaint, regardless of whether the specific Complaint has merit or not.

The Municipal Clerk will make every effort to respond in writing to a Complaint no later than 25 working days' after the complaint has been received. If the investigation extends longer than expected or if circumstances prevent the completion of an investigation in the given time period, the Municipal Clerk must advise the Supplier of the delay, in writing, and provide a revised date for the formal response.

Reports:

The Municipal Clerk, Procurement Officer and department Directors shall ensure that complete documentation and records, including records of all communications with Suppliers, are maintained. This will allow later verification by participants, auditors or senior officials to show that the procurement process was carried out in accordance with the municipal Procurement Policy and that the Complaint was handled in a timely fashion.

A record of the resolution of the Complaint will be retained by Municipal Clerk, for subsequent reporting to the Council.