



## EFFICIENCIES REPORT

**To:** George Vadeboncoeur, CAO, Town of Wasaga Beach  
Jocelyn Lee, Treasurer, Town of Wasaga Beach

**From:** Marilyn Clarke, Lawyer, LXM LAW LLP

**Date:** August 30, 2022

**SUBJECT:** PROCUREMENT POLICY MODERNIZATION PROJECT

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### INTRODUCTION

LXM LAW LLP was awarded a contract in March 2022 to review the Town's existing procurement policy framework with a view to modernizing it to help reduce costs, ensure compliance with legislative and trade treaty requirements, streamline administrative processes, and ensure a fair, transparent, and competitive procurement process for stakeholders.

The project included an analysis of the current state of the procurement policy framework, including a review of the current policy, a scan of comparator municipalities to ensure purchasing limits and thresholds were in line, and provided for the following deliverables: 1) updated procurement policy framework including an updated procurement policy, a procurement procedures manual and tendering and contract templates and 2) an efficiency report that outlines the anticipated efficiencies to be gained by the Town as a result of this project.

This report is deliverable 2, the efficiency report. The following provides an overview of the project, outlining LXM's observations on the Town's current state, describes the project deliverables and ends with a summary of the anticipated efficiencies to be gained by the Town following implementation of the new policy framework.

### OBSERVATIONS ON CURRENT STATE

Since adoption of the Town's procurement policy in 2012, Canada has modernized its domestic trade agreement replacing the previous agreement on internal trade with the 2017 Canadian Free Trade Agreement. At the same time, Canada adopted an international trade agreement, the Canada-EU Trade Agreement, that applies to municipalities. Both trade agreements contain detailed procurement rules that apply to municipal procurements that were not reflected in the Town's 2012 policy. Further, there have been 2 high profile Ontario municipal procurement inquiries in the last 17 years, specifically the Toronto Computer Leasing Inquiry in 2005 and the Collingwood Procurement Inquiry in 2020, that have informed best practices in procurement which were not well reflected in the 2012 policy.



The Town's original procurement policy framework consisted of a procurement policy comprised of a mix of policy and some procedures. Best practices in policy development are to allow management to establish, maintain and update procedures made pursuant to Council policies. When procedures are included in Council policies, it requires Council to be involved in approving changes to operational matters. Modern governance principles provide that Council should take a hands-off approach to operations and leave its management to Town staff. The Town's policy also provided purchasing limits that were lower than comparator municipalities requiring Council to be involved in low value procurements.

For tendering, the Town had one RFP template used by most departments, but we understand it had not been vetted for consistency with best practices.

The Town did not have a standard purchase contract terms and, except for its major construction contracts, the Town either did not use contracts or relied on contracts drafted by suppliers to establish the terms of its contractual relationships.

## **THE DELIVERABLES**

The project involved the development of a Council-level policy, a comprehensive procedures manual that ensures compliance with the new policy and the trade agreements, easy-to-use tendering templates and standard purchasing terms and conditions, all aligned with Ontario municipal industry trends.

### **1. Procurement Policy**

The new policy contains the following improvements:

- Clear description of the role and accountabilities of Council, the CAO, Treasurer and Department Heads in procurement;
- Delegation of expenditure, procurement, and contracting authority from Council to staff, thus clarifying the scope of staff's authorities to act without Council involvement;
- High level directional requirements relating to procurement and contracting processes, specifically the monetary thresholds that trigger higher levels of competitiveness and transparency in procurement;
- Focuses Council's attention on material procurements and exceptional circumstances and delegates authority to management to administer and approve low risk and lower value procurements;
- Authorization to participate in buying groups and to establish standing arrangements and prequalification processes;
- Limited justifications for engaging in non-competitive procurement, consistent with the trade agreements;



- Description of ethical obligations of all persons involved in procurement at the Town, including suppliers. The new policy also attaches a new Supplier Code of Conduct.

## 2. **Procurement Procedures Manual**

The Procurement Procedures Manual provides staff with step-by-step instructions to cover staff obligations over the entire procurement and contracting cycle in compliance with Council-delegated authorities, trade agreements and best practices.

The manual is comprehensive. It is designed to be used as a standalone resource including detailed procedures, reference documents, tools, checklists, and template forms and notices to ensure consistent and clear documents are used by all staff members.

The Procedures Manual and the templates (discussed below) are drafted to encourage staff to use the e-procurement process and eliminate the paper process.

## 3. **Tendering and Contract Templates & Templates User Guide**

The Town was provided with the following tendering templates:

- Request for Prequalification
- Request for Quotes – Simple (invitational)
- Request for Proposals – Simple (invitational)
- Request for Quotations
- Request for Proposals
- Request for Tenders

All templates, except for the Request for Tenders, are based on a non-binding tendering process which means the Town has flexibility to refuse to award a contract where it is not in the Town's best interest to do so, with lower risks of costly legal challenges. The templates reflect modern trends in procurement operations, are designed for ease of use by both bidders and Town staff and are drafted to be used with the Town's e-procurement solution. They are based on a "plug-and-play" structure, making it easy for staff to assemble. The templates clearly set out expectations of bidders and required specifications of bids to help minimize bidder errors and increase bid quality. The templated Bidder Workbook ensures bidders provide information in the same format making the review and evaluation of bids easier for Town staff. The RFX templates reserve the right of the Town to request a bidder to rectify a deficiency in a bid which ensures quality bids are not eliminated for administrative deficiencies. As an additional deliverable, LXM provided sample statement of works, technical forms and financial forms for common procurements to help guide staff draft these documents and reduce the time involved in drafting these documents from scratch.

The RFX template all reference the Town's standard contract terms, of which two templates were provided:

- Standard Terms for Goods and Services (to be posted on Town website)



- Contract for Goods and Services (to be attached to RFX documents)

The contract templates are drafted in plain English and take a balanced approach to the apportioning of risk between the Town and supplier. The shorter Standard Terms for Goods and Services is designed to be posted on the Town's website and referenced in the applicable RFX document. These terms become binding by referencing them in the final letter of award to a successful bidder. These terms do not require signing and as a result streamlines the contracting process. The Contract for Goods and Services is a more formal document to be attached to the RFX of higher risk/value procurements. This contract expands on the rights and obligations of the Town and supplier while maintaining a fair allocation of risk between the parties. As opposed to the Standard Terms, this contract requires a supplier's signature to be binding.

As a bonus deliverable, LXM provided a Template User Guide to accompany the RFX and contract templates. The user guide provides detailed instructions on preparing a RFX document and the final contract and refers the reader to the Procurement Procedures Manual where appropriate, ensuring the documents work in harmony. The Template User Guide also provides guidance to Town staff on pre-bid meetings, contractor insurance guidelines and bid and contract security guidelines.

## **EXPECTED EFFICIENCY GAINS**

The changes to the Town's procurement policy framework and the adoption of a suite of standardized templates that are compliant with legislative requirements and adopt best procurement practices are expected to result in cost and time savings for the Town and build stakeholder confidence in the Town's procurement process. These anticipated efficiencies can generally be summarized under the headings of staff efficiencies, bidder efficiencies and overall Town efficiencies.

### **1. Staff Efficiencies**

The revised procurement policy provides clearer roles and responsibilities for council and staff and aligns with accepted best practices. This clarity provides staff with more certainty in the process and gives authorities, at the appropriate levels, to allow Town staff to carry out their duties, thus contributing to streamlining the procurement process.

The increase of approval thresholds helps reduce delays associated with obtaining council approvals for routine procurements. This has the effect of achieving a better balance between contract value and administrative costs and reduces delays in acquisition of goods and services. It also reduces the procurement cycle timeline and will reduce related delays to the commencement of a project and reduce the likelihood of suppliers providing bids that include a premium to buffer against administrative delays.

With no dedicated procurement professional on staff, the new procurement procedures will serve to fill the information gap less experienced staff may have and ensure all staff members follow the same process. The procedures, which cover the entire procurement and contracting lifecycle from procurement planning to contract close out will guide staff, increasing staff confidence in



executing their procurement duties and reduce the likelihood of administrative errors. Increases in staff productivity gained by following a clear process will also lead to overall cost reductions associated with procurement activities.

The procedures will also serve as a standardized training tool to onboard new staff and ensure they follow the same Town-approved process, reducing the cost of training.

The procurement checklist provided in the procurement documents provides a guide for staff to follow while conducting individual procurements. This reduces administrative risk by ensuring important steps are not skipped, promotes consistency in the process and increases staff compliance with operational standards.

The RFX and contract templates and the 20 tools and form templates included in the procedures manual will make legally vetted, standard templates available to staff to assist them in carrying out their procurement function. This will create efficiencies by reducing staff time in sourcing and drafting documents and ensure document consistency.

The pre-packaged templates will permit staff to easily review and compare bids because of the clear requirements and standardized response forms bidders are required to complete. This will make the evaluation of bids easier, helping to reduce evaluation errors process and potentially reduce staff time involved in the evaluation process.

The short form RFP and RFQ for low value/risk invitational procurements will reduce the time required to prepare an RFX document and increases the likelihood of a contractor responding to a shorter version of the RFX for simple, invitational procurements.

Using Town contract templates will facilitate easier contract and contractor management. A contract template minimizes the need to negotiate contract terms and protects the Town by managing legal and operational risks.

## **2. Bidder Efficiencies**

Bidders will benefit from use of the pre-packaged RFX templates through better and clearer instructions, specifications and an easy to follow Bidder Workbook which will help to ensure bidders include all requested information in a pre-packaged format. Bidders will be more likely to participate in Town procurements that clearly set out the requirement and make it easier for bidders to present the information requested. More competition results in better pricing and services for the Town.

The availability of RFX, addendums and supporting information on an e-bidding platform, including the submission of questions and the uploading of final bids by suppliers will reduce the administrative burden associated with a paper based procurement competition and attract bidders who can more easily submit an electronic bid.

In the case of a bidder submitting a quality bid with an administrative error, the non-binding RFX documents allow the Town to give an opportunity to such a bidder to correct the administrative error, ensuring the Town is not obligated to pass over an otherwise compliant bid.

Once bidders are aware that the Town's procurement process is open and transparent and the Town applies its procedures fairly, this will increase bidder confidence and improve the range of qualified bidders, increasing competition and improving bid quality and price.

Clear expectations of bidders set out in the Supplier Code of Conduct, RFX documents and the contract templates will provide information to suppliers to allow them to clearly understand their obligations and risks. This, in turn, will reduce the need for suppliers to build a premium into their pricing to protect against unclear obligations or risks.

### **3. Overall Town Efficiencies**

The new procurement framework will also produce overall efficiencies for the Town without compromising the integrity of the procurement process. For instance, the authority for CAO and staff to carry out procurements at higher value thresholds than the previous policy refocuses council's involvement to higher value matters, when management does not recommend awarding to the selected bidder following a competitive process, or some other unusual circumstance. Increasing thresholds for council involvement in procurements ensures a reasonable balancing of administrative costs and risks for the Town.

The policy also clarifies council's role in procurement and emphasizes the importance of not interfering with the procurement process. This ensures procurement decisions are not influenced by political considerations and demonstrates to all stakeholders that the procurement process is fair and objective.

Council has provided the Town with the ability to use buying groups and implement standing arrangements that have the potential of allowing the Town to obtain better pricing through group purchasing and realizing greater efficiencies in its procurements.

As the procurement procedure encourages the use of bids and tenders and the RFX templates are drafted for use on the e-procurement site, this will allow Town requests to reach a greater selection of qualified suppliers, leading to greater competition and better pricing.

Relying on a set of in-house contract terms, rather than supplier contract terms, provides consistency in rights and obligations across all Town contracts and ensures the Town's interests are protected. The contract templates are drafted fairly and avoid the undue transfer risk to suppliers. This reduces the likelihood of suppliers requesting changes to the standard contract terms that may result in legal and operational costs. It also reduces the likelihood of suppliers building in a premium to the pricing to cover increased insurance costs or the assumption of a higher risk burden.



Enhanced compliance with the Canadian Free Trade Agreement and the Canadian/European Trade Agreement, and updating of the Town policy, procedures and templates, as informed by best practices, will reduce the likelihood of the Town receiving complaints about the process or be the subject of public scrutiny or a judicial inquiry.

It is well recognized that ethical lapses in procurement result in higher costs. This is why government entities worldwide have placed a greater focus on integrity and ethics over the last 2 decades. The Town has rounded out a robust ethics framework by adding a Supplier Code of Conduct to the existing Employee Code of Conduct and Council Code of Conduct, covering all stakeholders in the procurement process. This aids in avoiding costs and reputation losses associated with integrity lapses in the supply chain.

## **CONCLUSION**

Once introduced to Town staff with appropriate training and rolled out across the organization with appropriate support to ensure a high compliance rate by Town staff, the procurement framework is expected to result in both near term and far term improvements in the procurement activities of the Town resulting in cost and time savings for the Town, its staff and bidders. The continued and consistent implementation of this framework should also result in reputation benefits to the Town with increased community and supplier trust in the Town's open and transparent procurement operations.