

October 29, 2018

To: His Worship the Mayor
And Members of City Council

Re: Executive Committee: Amendments to The Regina Administration Bylaw, No. 2003-69

RECOMMENDATION

**RECOMMENDATION OF THE EXECUTIVE COMMITTEE
- OCTOBER 10, 2018**

1. That the proposed changes to *The Regina Administration Bylaw, No. 2003-69* be approved, as set out in Schedule 1 to this report, including:
 - a) Changes to better align with trade agreements such as the *New West Partnership Trade Agreement*, the *Canadian Free Trade Agreement*, and the *Canada-European Union (EU) Comprehensive Economic and Trade Agreement*;
 - b) Changes to align with leading practices in government procurement;
 - c) Changes to increase the authority for the Administration to enter into government funding revenue agreements on behalf of the City so the City can receive up to \$500,000 annually as opposed to the current annual limit of \$100,000;
 - d) Changes to increase the authority for the Administration to procure consulting and professional services from \$500,000 to \$750,000, before requiring City Council approval to issue the solicitation document;
 - e) Changes to increase various dollar amount limits associated with various stages of the procurement process to accord with the applicable trade treaties; and
 - f) General housekeeping amendments.
2. That the City Solicitor be instructed to prepare a bylaw to amend *The Regina Administration Bylaw, No. 2003-69*, in the manner set out in Schedule 1 to this report.

EXECUTIVE COMMITTEE - OCTOBER 10, 2018

Jim Elliot, representing the Council of Canadians, Regina Chapter, addressed the Committee.

The Committee adopted a resolution to concur in the recommendation contained in the report. Recommendation #3 does not require City Council approval.

Mayor Michael Fougere, Councillors: Bob Hawkins (Chairperson), Lori Bresciani, Sharron Bryce, John Findura, Jerry Flegel, Jason Mancinelli, Joel Murray, Mike O'Donnell, Andrew Stevens, and Barbara Young were present during consideration of this report by the Executive Committee.

The Executive Committee, at its meeting held on October 10, 2018, considered the following report from the Administration:

RECOMMENDATION

1. That the proposed changes to *The Regina Administration Bylaw, No. 2003-69* be approved, as set out in Schedule 1 to this report, including:
 - a) Changes to better align with trade agreements such as the *New West Partnership Trade Agreement*, the *Canadian Free Trade Agreement*, and the *Canada-European Union (EU) Comprehensive Economic and Trade Agreement*;
 - b) Changes to align with leading practices in government procurement;
 - c) Changes to increase the authority for the Administration to enter into government funding revenue agreements on behalf of the City so the City can receive up to \$500,000 annually as opposed to the current annual limit of \$100,000;
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 - e) Changes to increase various dollar amount limits associated with various stages of the procurement process to accord with the applicable trade treaties; and
 - f) General housekeeping amendments.
2. That the City Solicitor be instructed to prepare a bylaw to amend *The Regina Administration Bylaw, No. 2003-69*, in the manner set out in Schedule 1 to this report.
3. That this report be forwarded to the October 29, 2018 meeting of City Council for approval.

CONCLUSION

The Regina Administration Bylaw No. 2003-69 (the "Bylaw") governs the City of Regina's (the "City") process to procure goods, equipment and services and defines the authorities and

requirements for those who can authorize particular procurements and under what conditions. The Bylaw's requirements reflect a balance between the need for the City to obtain the necessary goods, equipment and services to support the City's operations and the need for the City to be accountable to citizens of Regina and vendors who participate in the procurement processes.

Updates to the Bylaw are needed to better align with recently enacted trade agreements and evolving industry best practices. The proposed amendments better achieve the foundational principles of an open, fair, efficient, accountable and transparent procurement process through process and language changes, which are discussed in this report and detailed in Schedule 1.

BACKGROUND

The Cities Act (the "Act") requires municipalities to establish a purchasing policy. The Bylaw contains a Purchasing Policy (Schedule D), which sets out the policies and procedures the City is required to follow to obtain the best value when procuring goods, equipment and services.

The Administration recently conducted a review of the City's procurement processes. The review looked at the procurement process for other municipalities and industry best practices, and obtained input from internal staff and various industries, including the construction industry. It identified challenges and potential changes in the procurement and contract processes.

On July 1, 2017, the *Canadian Free Trade Agreement* (formally the *Agreement on Internal Trade*) came into effect and included updated requirements related to procurement to align with the *Canadian-European Comprehensive Economic and Trade Agreement* which came into effect provisionally on September 21, 2017.

While the existing Purchasing Policy in Schedule D of the Bylaw has served the City well, it needs to be updated to allow the City to stay competitive in the current market and ensure compliance with trade treaties.

DISCUSSION

The proposed Bylaw amendments align with trade agreements, legislated requirements and best practices while clarifying the process through standardized language. They ensure the City's procurement processes are conducted in an effective, open, fair, transparent, accountable and efficient manner while enabling new ways for the City to procure goods, services and construction and consulting services.

Proposed Changes to the Bylaw and Related Procurement Practices

Below is a discussion of key proposed policy/bylaw changes. Detailed specific recommended changes to the Bylaw sections and wording, with brief rationale, are included in Schedule 1.

1. Changes to comply with trade treaties and industry best practice

General Acquisition

With new trade treaties and considerable inflation to the cost of goods and services since 2003, the Administration is looking to amend the Bylaw to update it to reflect the standard industry language. In particular, a public procurement process will be known as a standard procurement process and sole source and direct appointment will be known as non-standard procurements. Non-standard procurements will be acquisitions that may include either (i) a non-competitive procurement or (ii) a limited competitive procurement.

Dollar values are one of the factors that Administration will use to determine the appropriate procurement tool. The proposed bylaw amendments change the dollar amount definitions as follows:

	Present Bylaw	Proposed Bylaw
Low dollar	Up to \$25,000	Up to \$7,500
Medium dollar	\$25,000 to \$75,000	\$7,501 to \$75,000
High dollar	Over \$75,000	Over \$75,000

These changes will provide greater responsiveness for low dollar procurements and more structure for medium dollar procurements. Changes to the dollar amount definitions are not required by trade treaties. Instead, they are based on best judgement for improved rigour and functionality based on the Administration's experience.

Dollar limits within the trade treaties will be adjusted for inflation every two years. This adjustment will require the City review and potentially adjust limits within the Bylaw every two years.

Acquisition Methods

The proposed Bylaw amendments will add new sections that describe the various types of standard acquisition methods such as purchase cards, rosters of pre-approved vendors, verbal and written quotations. The trade treaties, as well as the type of good, equipment or service, along with the value and risk associated with the procurement will guide which acquisition method the City will use.

A non-standard procurement could be either a non-competitive procurement or a limited competitive procurement. Under the trade treaties, there is a threshold of \$75,000. Below that threshold, the City can, at its own discretion, undertake non-standard procurement methods (limited competitive procurement). Administration has developed protocols outside of the Bylaw to ensure that non-standard procurements are the exception to ensure the City's procurement processes remains transparent and fair.

Currently, the City allows sole sourcing of a good or service and direct appointing consultants and professional services as long as the costs do not exceed \$5,000 and \$50,000 respectively. The proposed changes to the Bylaw will categorize sole sources and direct appointments as non-standard procurement and will increase their limit to \$75,000. Trade treaties prohibit non-standard procurement above \$75,000 unless the procurement fits within a prescribed exception. The most common exceptions include:

- an emergency;
- there is only a single vendor due to proprietary rights;
- the City has adopted a City standard through a public process;
- the commodity is subject to a fluctuating price;
- the purchase is from another government owned enterprise, academic institutions, or library; or
- other exceptions that may be available under applicable trade treaties.

To ensure continued compliance with trade treaties, the City proposes implementing this change under the heading of non-standard procurement.

Adoption of Standards

Currently, the Bylaw allows Administration to develop City standards for certain goods, services and equipment. For example, it is beneficial to use the same type of pump in all the City pump stations because doing so makes it more economical to have replacement parts on hand and is easier for City staff to maintain only one type of pump. The proposed bylaw amendment adds a section clarifying that the initial setting of a City standard must be determined using an open and competitive process that clearly indicates the establishment of a standard for that good, service or piece of equipment.

Vendors and Vendor's Lists

The Bylaw currently authorizes the City to place a vendor who has performed work poorly or not performed the required work (for the City) on a list and remove them from consideration for future work for the City. The proposed Bylaw amendments extends the suspension period from two to three years to be more consistent with other municipalities.

2. Authority, dollar amount and length of contract changes

Council Contract Approvals and Amendments

Currently, consulting and professional services require City Council approval once they exceed \$500,000. This limit has not been updated since 2003. The proposed Bylaw amendment will raise this \$500,000 limit to \$750,000 to account for PST, inflation and recent market trends.

Administration Amendments to Contracts

Currently, the Administration can amend contracts due to unforeseen work or where scope needs to be expanded for additional work that is considered integral to the project and where the City would be faced with added costs if the additional work was to be handled through a separate contract. The second provision relating to amending the contract to expand beyond original contemplated scope will be eliminated. In the event a project requires expansion beyond the original contemplated scope, such an amendment will be made through the non-standard procurement process. Contract amendments for unforeseen work consistent with the original scope will still be permitted.

Supply Arrangements for Recurring Requirements

At present, the City undertakes a public procurement process to set up purchase arrangements for goods, equipment and services that the City uses on a reoccurring basis. The proposed Bylaw amendment provides additional detail and guidance around these reoccurring arrangements. It specifies that the arrangements be established through a public procurement process and at the frequency now prescribed by *Canada-European Union (EU) Comprehensive Economic and Trade Agreement*.

Government Funding Agreements

The Administration currently has delegated authority to enter agreements where it receives revenue from government grants, advertising, concessions or vending machines in City facilities up to \$100,000. The Administration proposes to amend this \$100,000 limit to \$500,000 where the funding agreement is with the Provincial or Federal government. The existing limit has not been revised since the Bylaw was enacted in 2003 and very few funding opportunities now fall under \$100,000.

Multiple Year Contracts

At present, the Bylaw sets a five-year contract limit. The proposed Bylaw amendment will permit the acquisition or extension of a software licence or software or a software through a subscription base service beyond five years provided the City is able to terminate the agreement on at least an annual basis.

The current five-year limit means that the City may make significant investment into a product in terms of integration with other systems, processes, software or data storage, but must procure a provider every five years. The current Bylaw contains a provision allowing contracts be extended beyond the five-year contract limit but, only if they relate to the maintenance or service of an existing or coincidently acquired asset. While at one time software purchases were in the nature of an asset purchase, and used this provision, these services are now also commonly being made available as a subscription-based service.

Change Orders

At present, the City Clerk executes most contracts on behalf of the City with the exception of purchase order forms of contract which have been delegated in Schedule E of the Bylaw to the Executive Director, Financial and Corporate Services. For improved efficiency and to correspond to the new form of construction documents, the Administration recommends delegating the signing authority for change orders to Executive Director, Financial and Corporate Services.

3. General housekeeping items

General housekeeping revisions are being recommended to reflect organization and position title changes that have occurred since the Bylaw was originally drafted.

The full details of the provisions to be amended are detailed in Schedule 1 of this report.

RECOMMENDATION IMPLICATIONS

Financial Implications

The proposed changes to the Bylaw will result in streamlined processes and timelines within the procurement process while continuing to maintain the highest standards of financial and procedural integrity in alignment with trade treaties and industry best practices. Streamlining the procurement process allows the City to operate more efficiently which can free up capacity to deliver more work with the City's current resources.

Environmental Implications

None with respect to this report.

Policy and/or Strategic Implications

These proposed Bylaw amendments meet the following key goals of the Official Community Plan ("OCP"):

Section B (Financial Policies) highlights the importance of achieving long-term financial viability. It specifically stresses the importance of providing services and amenities in a cost effective manner. Adopting new methods of procurement aligns the City with industry best practice and provides additional tools to procure goods and services at reduced costs. Streamlining the procurement process also allows the City to operate more efficiently which can free up capacity to deliver more work with the City's current resources.

Goal 4 (Revenue Sources) of Section B (Financial Policies) focusses on revenue growth and sustainability. This portion of the OCP speaks specifically to collaboration with other levels of government to secure additional funding. The recommended increase for Administration to enter revenue agreements from \$100,000 to \$500,000 will be more representative of currently offered revenue opportunities and create efficiencies in the process.

Section D4 (Infrastructure) of the OCP directs the City to meet regulatory requirements and industry best practice when considering new infrastructure. The recommendations of this report speak to implementing industry best practice and alignment with trade treaties. While these proposed changes are not necessarily new infrastructure in their own right, these changes to the procurement process provide the mechanisms to help the City procure the right infrastructure while minimizing risk to the City.

Other Implications

None with respect to this report.

Accessibility Implications

None with respect to this report.

COMMUNICATIONS

As required in sections 101(2)(j) and 154 of *The Cities Act*, amendments to the Purchasing Policy require public notice. The City will provide public notice of the proposed amendments to the Bylaw in accordance with *The Public Notice Bylaw*, No. 2003-8.

DELEGATED AUTHORITY

The Act requires that City Council approve all amendments to bylaws. Therefore, the recommendations contained in this report require City Council approval.

Respectfully submitted,

EXECUTIVE COMMITTEE

A handwritten signature in black ink, appearing to read 'J. Nicol', is written above a horizontal line.

Jim Nicol, Secretary