

CITY OF WHITEHORSE COUNCIL POLICY



PROCUREMENT POLICY

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PURPOSE

The purpose of this policy is to set out the principles, procedures, roles and responsibilities for the City of Whitehorse Procurement program.

1.0 POLICY AND PRINCIPLES

1.1 Policy Statements

The City is committed to consistent, fair, accessible and transparent purchasing practices for the acquisition of Deliverables that ensure the City obtains Best Value and good outcomes for its expenditures on behalf of the public.

The City values continuous improvement and will strive to be a leader in advanced Procurement solutions that are efficient, quality-focused and consider the “total cost of ownership” where possible.

1.2 Principles

The City will acquire the Deliverables required to meet City needs through Procurement processes that reflect the following principles:

a) Compliance

The City’s Procurement practices are consistent with applicable legislation, policy and procedures.

b) Supplier Access, Transparency, and Fairness

Access for qualified Suppliers to compete for the City’s business must be publicly available and the Procurement process must be conducted in a transparent manner ensuring adherence to the highest standards of fairness and ethical conduct.

c) Best Value

Funds for City purchases are provided by the public, therefore the City is committed to achieve Best Value through consideration of the full range of Procurement formats and the adoption of commercially reasonable procurement practices.

d) Efficient and Effective Procurement

The City strives for efficiency and cost effectiveness in its Procurement practices and will endeavor to reduce the overall consumption of Goods and Services, where practicable.

e) Local Procurement

Local Procurement supports the local economy, therefore the City will procure from Local Businesses when Deliverables meet the City's specifications and are available locally at competitive prices, subject to the terms of any applicable territorial/provincial or national trade agreements.

f) Sustainable Procurement

The City intends to align its procurements with its existing sustainability practices, initiatives and plans, thereby advancing a corporate culture at the City that recognizes and places a priority on Economic Sustainability, Environmental Sustainability and Social Sustainability.

2.0 INTERPRETATION AND APPLICATION

2.1 Definitions

Whenever the singular, masculine or feminine is used in this Policy it shall be considered as if plural, feminine or masculine has been used where the context of the Policy so requires.

In this Policy:

Administrative Directives means directives issued by the City Manager in respect of practices and/or policies affecting City Procurements.

Administrative Procedures means procedures or guidelines issued by the Manager, Financial Services, that set out the procedural requirements to be carried out in fulfillment of this policy.

Best Value means the most advantageous combination of financial and non-financial factors that meet the Solicitation Document requirements; these factors may include:

- Quality, which is fitness for purpose, of the Deliverables;
- Delivery and performance commitments;
- Supplier experience, performance history, practices, risk and compliance management, and demonstrated ability to successfully perform the Contract;
- Economic Sustainability considerations;
- Environmental Sustainability considerations;
- Social Sustainability considerations;
- Total cost of ownership, which may consider factors such as:
 - Total Purchase or Contract price;
 - Administration and Contract management costs;
 - Payment terms;
 - Cost of delay or performance failures;

- Extensions, change orders, cost escalation;
- Additional features,
- Licensing costs;
- Limitations associated with proprietary or patent rights;
- Regular and ongoing maintenance;
- Warranty, parts and repair;
- Transition and training costs;
- Lifecycle costs; and/or
- Disposal value and disposal costs, including remediation.

Bid means a submission in response to a Solicitation Document, including proposals, quotations or responses.

Bidder means a Supplier that submits a Bid, and includes proponents and respondents.

Bond means a written agreement in which a surety company guarantees that a contractor will fulfill its obligations to a third party to perform certain works and in which, if the contractor defaults on its obligations, the surety company agrees to complete the obligations or pay for the completion costs to the third party.

City Manager means the chief administrative officer of the City, appointed by bylaw pursuant to the *Municipal Act*.

Competitive Procurement Process means Open Competitions, Invitational Competitions and any other form of competitive Procurement Process used by the City.

Conflict of Interest means a situation in which the personal interests of a Council member, officer or employee of the City come into conflict with, or appear to come into conflict with, the interests of the City.

Construction means construction, reconstruction, demolition, repair or renovation of a building, building fixture, structure or other civil engineering or architectural work and includes the preparation, excavation, drilling, seismic investigation, and the supply of products, materials, equipment and machinery related thereto.

Contract means a binding agreement by way of a purchase order or other formal agreement between the City and a Supplier that creates an obligation regarding Procurement of Deliverables. For the purposes of this policy, Contract does not include leases entered into by the City.

Council means the elected Council members of the City.

Deliverables means any Goods, Services, or Construction or a combination thereof.

Director means the City employee responsible for the specific division or unit of the City that is requisitioning the purchase of Deliverables.

Economic Sustainability means providing and enhancing the City services, infrastructure and conditions that sustain a healthy, diverse and resilient local economy in which businesses of all sizes, and their employees, can flourish.

Emergency means a sudden, unexpected, or impending situation that may cause injury, loss of life, damage to the property and/or significant interference with the normal activities of the City and which, therefore, requires immediate attention and remedial action. This includes a situation which may endanger the health and/or safety of any City employee or member of the public; and/or a situation which may jeopardize City property and/or threaten the maintenance of essential City services.

Environmental Sustainability means protecting and enhancing the climate, ecology and natural resources for future generations through approaches that reduce carbon dependency, enhance energy resilience, conserve energy and resources, and reduce waste and toxins. Related practices may include purchasing products that are durable, reusable, contain post-consumer, recyclable, non-toxic and/or non-petroleum or carbon-based content, minimize packaging, and/or are new environmentally preferable products.

Fairness Monitor means an independent third party whose role is to observe all or part of a procurement process, to provide related feedback on fairness issues to the City, and to provide an unbiased and impartial opinion on the fairness of the observed procurement process.

Goods means goods produced, manufactured, grown or otherwise obtained, used for a commercial purpose and distributed from a party.

Invitational Competition means a Competitive Process in which an invitation to submit Bids is issued to at least three Suppliers.

Local Business means a business that has a valid City or inter-municipal business licence and has a physical address located in the Yukon from which its business is conducted.

Negotiated Competitive Procurement means a competitive Procurement process that includes a negotiation/discussion phase with short-listed proponent(s) prior to the submission of a best and final offer.

Open Competition means the solicitation of competitive Bids using a publicly posted Solicitation Document.

Procurement means the acquisition of Deliverables by purchase, rental or lease.

Procurement Office means Financial Services staff responsible for the City's Procurement function.

Procurement Supervisor means the highest ranking Financial Services procurement staff person.

Purchaser means the person who, on behalf of the City, is initiating and overseeing the Procurement, and the general management of the Deliverables being procured.

Purchasing Card means the credit card provided by the City's Financial Services department with its use bound by the provisions of the Procurement Policy.

RFX means “request for X”, with X representing any of the formal Solicitation Documents used to obtain information or cost estimates for the Procurement of Deliverable, including request for proposal (RFP), request for quotation (RFQ), request for tender (RFT), request for prequalification (RFPQ), request for expression of interest (RFEOI) and request for information (RFI).

Service Area means a division, department or other organizational unit within the City’s administrative structure.

Service Area Head means the highest ranked position of a Service Area that is the primary user or coordinator of the Deliverables to be procured.

Services means services supplied or to be supplied by a person or business.

Single Source Procurement means purchases from a selected Supplier even though other Suppliers exists that provide similar Deliverables.

Social Sustainability means cultivating and sustaining vibrant, creative, safe, affordable and caring communities for the wide diversity of individuals and families that live in, work in and visit the City.

Sole Source Procurement means purchases where there is only one Supplier that provides the required Deliverable.

Solicitation Document means the document issued by the City to solicit Bids from Bidders, including an RFX.

Standing Offer means a written offer from a pre-approved Supplier to supply Deliverables to the City upon request, through use of an ordering process during a particular period of time, at a pre-determined price or discount, generally within a pre-defined dollar limit.

Supplier means a person or entity carrying on the business of providing Deliverables.

2.2 Application

2.2.1 This policy applies to all employees and other authorized personnel responsible for Procurement of Goods and Services for the City.

2.2.2 This policy applies to the Procurement of all Deliverables with the exception of those listed in **Appendix A – Items Exempt from this Procurement Policy**.

2.2.3 Procurement by the City may be subject to the provisions of applicable trade agreements. Where an applicable trade agreement is in conflict with this policy, the trade agreement shall take precedence.

2.2.4 The City may participate in cooperative or joint Procurement initiatives with other entities where such initiatives are determined to be in the best interests of the City. If the City participates in such initiatives, the City may adhere to the policies of the entity conducting the Procurement process provided that such policies comply in spirit with this policy.

3.0 ROLES, RESPONSIBILITIES AND AUTHORITIES

3.1 Roles and Responsibilities of Council

It is the role of Council to establish policy and approve expenditures through the City's budget approval process. Council monitors the outcomes of this Procurement Policy and may determine that amendments are warranted thereto. Council approves annual budgets and amendments thereto, as needed to fund Procurements.

Through this policy, Council delegates to the City's employees the authority to incur expenditures in accordance with approved budgets through the Procurement of Deliverables in accordance with the policy direction, rules and processes set out in this policy, and related protocols and procedures.

- 3.1.1** Council authorization shall be required prior to the commencement of Procurements with an estimated value of \$500,000 or more and of Procurements less than \$500,000 that are deemed to be of significant risk, involve security concerns or may be of significant community interest as recommended by the Purchaser and/or the Procurement Supervisor, or as identified by Council in response to the bi-monthly report under section 3.5.1 of this policy.

Prior to the commencement of such a Procurement, Administration will provide a report to Standing Committee providing details about the proposed Procurement including how it addresses the Principles set out at section 1.2 of this policy. Council may provide strategic direction regarding how the Procurement will address those principles .

- 3.1.2** For Procurements described in section 3.1.1 of this policy, during periods when a meeting of Council is unable to be convened due to lack of quorum and time is of the essence, authority shall be delegated to the City Manager.

3.2 Conditions of Council's Delegated Authority

- 3.2.1** Purchasers shall ensure that an approved budget exists for a proposed Procurement, that it conforms to this Purchasing Policy, that it does not violate any City policies or applicable law and that it will satisfy any applicable audit and documentation requirements of the City.

- 3.2.2** Subdividing, splitting or otherwise structuring Procurement requirements, processes or Contracts in order to reduce the value of the Procurement in any way or circumvent the requirements or intent of this policy is not permitted.

- 3.2.3** Failure to adhere to the requirements of this policy and to Administrative Directives or Administrative Procedures related to its implementation will lead to disciplinary action which may be up to and including termination of employment.

3.3 Roles and Responsibilities of the City Manager and Employees

3.3.1 The City Manager:

- Implements and ensures compliance with this policy;
- Monitors policy outcomes and provides regular implementation reports to Council;
- Ensures that the policy is reviewed regularly and brings forward any recommended amendments for Council's consideration;
- Issues Administrative Directives as required to implement the policy; and
- Delegates spending authority limits to staff in accordance with this policy and all other applicable policies.

3.3.2 The Director, Corporate Services:

- Monitors compliance with this policy and advises the City Manager when there has been non-compliance.

3.3.3 The Manager, Financial Services:

- Monitors compliance with this policy and advises the Director, Corporate Services when there has been non-compliance;
- Determines whether Deliverables qualify for exemption under Appendix A – Items Exempt from this Procurement Policy;
- Approves and issues Administrative Procedures and/or guidelines required to implement this policy;
- Establishes, through consultation with the Procurement Office, standards for bid solicitations, Contracts and other Procurement-related documents;
- Implements financial controls that meet the City's audit requirements to ensure that those responsible for requisitioning and purchasing goods and/or services are held accountable for their decisions

3.3.4 The Procurement Supervisor (or delegate):

- Provides advice and assistance to the City Manager, the Manager, Financial Services, Service Area Heads and City staff regarding the Procurement of Deliverables;
- Represents the City in the procurement function in dealings with City employees and Suppliers;
- Acts on the City's behalf from time to time in joint Procurement of Deliverables with other entities, agencies and municipalities;
- Develops, implements and maintains Administrative Procedures and processes required to implement this policy;
- Oversees the Procurement processes from inception through to award;
- When appropriate and feasible, standardizes and coordinates the procurement of Deliverables for multiple Service Areas;

- Monitors adherence to and compliance with the provisions of this policy and its associated procedures, and advises the Manager, Financial Services, when there has been non-compliance; and
- Maintains a repository of Contracts in accordance with existing City records management authorities and practices.

3.3.5 Service Area Heads:

- Support the implementation of this policy in their respective Service Areas;
- Ensure compliance with this policy and advise the Procurement Supervisor when there has been non-compliance;
- Ensure approved budget funding is available for Service Area purchases;
- Delegate spending authority limits to staff in compliance with this policy and all applicable City policies and Administrative Directives;
- Promote conduct and communication with Suppliers and contractors that is fair, professional and respectful and provide technical assistance as required;
- Review and approve proposed departmental Solicitation Documents to ensure clarity, reasonableness and quality;
- Ensure open, fair and impartial processes for Procurement for the Service Area;
- Award and execute Contracts within the Service Area scope and budget and within the Service Area Head's signing authority; and
- Promote the standardization of Deliverables where that demonstrates and supports the objectives of this policy.

3.3.6 Purchasers are responsible for complying with this policy and ensuring that procedures are consistently applied. The Purchaser:

- Prepares all specifications of the Solicitation Document;
- Ensures adequate time is allotted for the bidding process in order to meet the minimum posting requirement for a public Procurement;
- Issues purchase orders for Deliverables per spending limit protocols and authorities;
- Manages contracts to ensure Deliverables are received by the City and they comply with contract terms and conditions;
- Monitors all contract expenditures and ensures that all financial limitations have been complied with and that all accounts are paid within the times set out in the contract;
- Monitors and reports on the performance of suppliers; and
- Standardizes the use of goods and/or services, where such standardization demonstrates and supports the purposes, goals and objectives of this Policy.

3.4 Approval Authority and Spending Limit Protocols

- 3.4.1** Unless otherwise provided in this policy, Procurement expenditures shall be authorized in accordance with Appendix B – Procurement Authority Matrix.
- 3.4.2** The City Manager may authorize delegations of the spending authorities set out in Appendix B – Procurement Authority Matrix.
- 3.4.3** Delegated signing authorities approved by the City Manager may be authorized to enter into purchasing agreements that conform to this policy.
- 3.4.4** Staff who have been delegated approval authority shall have no authority to delegate that authority to any other person. A staff member acting on behalf of another staff member shall have the authority of the position in which he or she is acting.

3.5 Reporting Requirements

- 3.5.1** On a bi-monthly basis, Administration will provide publicly to Council a list of forthcoming Procurements with an anticipated value greater than \$100,000.
- 3.5.2** On a semi-annual basis, Administration will report publicly to Council regarding the outcomes of this policy, including at a minimum:
- Contract awards with a value of \$100,000 and over;
 - Procurements with a value of over \$100,000 that have incorporated requirements related to Economic Sustainability, Environmental Sustainability and/or Social Sustainability in their Solicitation Documents;
 - Procurements for which authority has been delegated to the City Manager pursuant to section 3.1.2 of this policy;
 - Non-Competitive, Single Source or Sole Source Procurements with a value over \$50,000;
 - Emergency Procurements, including their value;
 - Pursuant to section 6.2 of this policy, contract extensions or renewals where the original contract contains no option for renewal, describing how the extension or renewal conforms to the requirements of this policy; and
 - Instances of non-compliance with the policy and ensuing actions taken in each instance.

4.0 ETHICAL CONDUCT AND CONFLICTS OF INTEREST

4.1 Conflicts of Interest

The City's Procurement activities must be conducted with integrity and all individuals involved must act in a manner that is consistent with this policy and in accordance with applicable codes of conduct, e.g., the City's Employee Code of Conduct.

Conflict of Interest includes but is not limited to:

- Situations or circumstances that could give a Supplier an unfair advantage during a Procurement process or compromise the ability of a Supplier to perform its obligations under an agreement;
- The offer or giving of a benefit of any kind, by or on behalf of a Supplier, to anyone employed by or otherwise connected with the City.

Conflicts of Interest are not necessarily always wrong or unethical. However, they must be identified and managed appropriately to serve the public interest. Mismanagement or concealment of Conflicts of Interest may lead to accusations of corruption, fraud, or other criminal charges for individuals or entities involved.

As such, the City requires its Suppliers to act with integrity and conduct business in an ethical manner. The City may refuse to do business with any Supplier that has engaged in illegal or unethical business practices, has or fails to disclose an actual or potential Conflict of Interest or an unfair advantage, or fails to adhere to ethical business practices.

The City reserves the right to:

- Determine whether any situation or circumstance constitutes a Conflict of Interest, providing a substantiating rationale to the affected party or parties;
- Disqualify a Bidder from a Procurement process due to a substantiated Conflict of Interest;
- Require Bidders participating in a Procurement process to declare any perceived, actual or potential Conflict of Interest;
- Require Suppliers to avoid any Conflict of Interest during performance of their Contract obligations to the City and to disclose any Conflict of Interest that may arise;
- Prescribe the manner in which a Bidder or Supplier should resolve a Conflict of Interest;
- Terminate a Contract where:
 - A Supplier fails to disclose any actual or potential Conflict of Interest;
 - The Supplier fails to resolve its Conflict of Interest as directed by the City; or
 - The Conflict of Interest cannot be resolved.

Furthermore:

- Individuals participating in the evaluation of Bids must immediately declare and address any potential Conflict of Interest.

4.2 Supplier Conduct

The City requires its Suppliers to act with integrity and conduct business in an ethical manner. The City may refuse to do business with any Supplier that has engaged in illegal or unethical bidding practices, has an actual or potential Conflict of Interest or an unfair advantage or fails to adhere to ethical business practices.

4.2.1 Illegal or Unethical Bidding Practices

Illegal or unethical bidding practices include:

- Bid-rigging, price-fixing, bribery or collusion or other behaviors or practice prohibited by federal or provincial statutes;
- Offering gifts or favours to the City's officers, employees, appointed or elected officials or any other representative of the City;
- Engaging in any prohibited communications during a Procurement process;
- Submitting inaccurate or misleading information in a Procurement process; and/or
- Engaging in any other activity that compromises the City's ability to run a fair Procurement process.

The City will report any suspected cases of collusion, Bid rigging or other offenses under the *Competition Act* to the Competition Bureau or other relevant authorities.

4.3 Prohibitions

4.3.1 No Council member, appointed officer or City employee shall interfere in the Procurement process by knowingly causing or permitting anything to be done or communicated to anyone in a manner that is likely to cause any potential Supplier to have an unfair advantage or disadvantage in obtaining a Contract for the supply of deliverables to the City.

4.3.2 Other than documents or information publicly available, Council members shall not be given documents or otherwise receive information related to a particular Procurement that is considered confidential and has a bearing on the outcome of a Procurement process while the Procurement process is under way. Bidders who contact members of Council regarding a Procurement while the Procurement process is under way will be directed to communicate with the contact person listed in the Solicitation Document.

For the purposes of this section, the Procurement process is understood to commence when the RFX is posted and to conclude when the contract award is communicated publicly. For greater certainty, during this period Council members will not have access to any Bid, or evaluation ranking or evaluation team report.

4.3.3 No Deliverables shall be purchased from a Council member, officer or employee of the City or from any immediate relative or business or professional associate of that person, unless the extent of the interest of the Council member, officer or employee has been fully disclosed and the Procurement approved by:

- The Manager, Financial Services in the case of City employees; or
- By Council in the case of Council members or appointed officers.

4.3.4 No employee or Council member shall utilize City assets, Contracts, Procurement processes or policies to obtain Deliverables for personal advantage except for Supplier-offered employee discount programs, or Deliverables procured on the City's behalf specifically for employee wellness or other human resource initiatives.

4.3.5 Absolutely no gifts or favours are to be accepted by the purchasing representatives of the City in return for business or the consideration of business. City employees shall not endorse one Supplier in order to give that Supplier an advantage over others.

5.0 PROCUREMENT PROCESSES

5.1 Solicitation Documents

Solicitation Documents are a key mechanism to give effect to the policy principles set out in section 1.2 of this policy and to enable the City to achieve Best Value. The terms and specifications, including evaluation criteria, set out in a Solicitation Document must take into consideration, and to the extent practicable, reflect and implement those policy principles.

The requirements contained in a Solicitation Document must be fair and reasonable in relation to the City's needs, and be written so as not to unreasonably limit Suppliers from submitting Bids by virtue of excessive or limiting standards or other criteria.

Solicitation Documents must include:

- All information material to the Procurement;
- All evaluation criteria that will be considered in the evaluation of the Bid; and
- Administrative matters such as the Procurement process dates, contact information, etc.

5.2 Low Value Procurement (Purchases Not Exceeding \$10,000)

The Purchaser may directly select a Supplier, without obtaining quotes, however, the procedure used to purchase low value Deliverables shall otherwise be in accordance with this policy. Obtaining competitive quotes, although not required, remains a good business practice and should be done where practicable.

Purchases of low value Deliverables may be made using a properly authorized Purchasing Card, Purchase Order or petty cash.

5.3 Competitive Procurement Methods

All purchases exceeding \$10,000 ordinarily must use an open, transparent, competitive selection process whereby competitive Bids are obtained.

5.3.1 Invitational Competition (greater than \$10,000 to \$50,000)

The Purchaser may directly obtain written quotes from a minimum of three Suppliers. Quotes obtained, or evidence of efforts towards obtaining quotes, must be documented and submitted to the Procurement Office. If the Purchaser has exhausted all efforts to obtain three quotes and can support this with documented evidence, a minimum of two written bids is acceptable if approved by the Manager, Financial Services.

A resulting Procurement must be approved by the Service Area Head or delegate.

The Deliverables shall be purchased through the issuance of a Purchase Order.

5.3.2 Request for Quotation (RFQ)

Deliverables estimated at more than \$50,000 but less than \$100,000 may be handled by a RFQ when the requirement can be fully defined and an award selection made on the basis of total cost that meets all specifications, terms and conditions.

The Purchaser shall provide the Procurement Office with a purchase requisition form containing the relevant specifications, terms and conditions for Procurement of the Deliverables.

A resulting Procurement must be approved by the Service Area Head or delegate and the Procurement Office.

The Deliverables shall be purchased through the issuance of a Purchase Order.

5.3.3 Request for Tender (RFT) or Request for Proposal (RFP)

An RFT or RFP must be used for any purchase valued over \$100,000 and may be used for lesser value purchases where appropriate.

- An RFT is used to solicit competitive Bids for Deliverables when the solutions, specifications, performance standard(s) and timeframe(s) are defined in the Solicitation Document. Tenders are typically awarded to the compliant Bidder with the lowest cost.
- An RFP is an alternative to the RFT, normally for the provision of Services, complex Goods or Construction, and allows the Bidder to propose a solution to the City's requirements, which may include providing unique skills. The selection of the successful Supplier is based on the evaluated overall Best Value to the City as defined via the specifications set out in the Solicitation Document.

An RFT shall be used where all of the following criteria apply:

- Two or more Suppliers are considered capable of supplying the Deliverables;
- Price is the only determining criterion;
- Market conditions are such that Bids can be submitted on a common pricing basis; and

- It is intended to accept the lowest priced compliant tender without negotiations.

Should those criteria not apply, another procurement method approved by the Procurement Supervisor will be used in place of the RFT.

For both RFTs and RFPs, the Purchaser shall provide to the Procurement Office a purchase requisition form approved by the Service Area Head containing the relevant specifications, terms and conditions for Procurement of the Deliverables.

A resulting Procurement requires the following approval:

- The Service Area Head or delegate, and the Procurement Office must jointly approve awards up to \$100,000.
- The Manager, Financial Services and Procurement Office must jointly approve awards greater than \$100,000 and up to \$500,000.
- The City Manager must approve awards greater than \$500,000.

The Deliverables shall be purchased through the issuance of a Purchase Order or a formal Contract, as applicable.

5.3.4 Negotiated Competitive Procurement

In some cases, typically when procuring major and/or complex Deliverables, a traditional RFP with specific requirements may not be possible, or beneficial for the City. This includes projects where a range of alternative proposed methods exist to meet the City's needs, while still meeting the basic requirements set out in the Solicitation Document. To make the most efficient and cost effective use of City resources, and limit the cancelling of RFPs, the City may choose to make use of a Negotiated Competitive Procurement.

The Negotiated Competitive Procurement process builds on the RFP process by including a phase during which shortlisted proponents engage in private dialogues with the City's evaluation committee members prior to submitting a best and final offer. The Negotiated Competitive Procurement steps will follow the RFP steps outlined in this Policy with the following changes:

- The RFP must state that a Negotiated Competitive Procurement process will be used.
- A short-list of Bidders will be established based on evaluation criteria in the RFP.
- Discussions/negotiations will be initiated with each Bidder regarding the Negotiated Competitive Procurement process, issues and concerns about the requirements set out in the RFP, and each Bidder's specific proposal.
- Following these structured discussions, all Bidders will be requested to provide their best and final offers.
- Revised proposals will be evaluated using the original evaluation criteria and evaluation team members.

The following will apply to all Negotiated Competitive Procurements:

- All Negotiated Competitive Procurements must be approved and led by the Procurement Office, with the involvement of staff of the Service Area procuring the Deliverable.
- No negotiations will take place unless the possibility of negotiations is expressly noted in the RFP Solicitation Document.
- Areas open for negotiation will be limited to areas chosen by the City.
- All proposals provided and subsequent negotiations will be treated confidentially; the City will ensure Bidders will not have access to another Bidder's proposal or Bid.
- All proponents will be treated equally throughout the process. Any changes or modifications made to requirements will be shared equally with all Bidders engaged in the competition.
- All short-listed proponents will be provided with an equal chance to provide a best and final offer.

5.3.5 Bid Evaluation

The Procurement Office will evaluate all Bids to confirm compliance with the requirements set out in the Solicitation Document.

An evaluation team will be formed comprising at least two staff members, one of which will be the manager or designate of the Service Unit requisitioning the Deliverables. The evaluation team will conduct the evaluation of Bids in accordance with the evaluation methodology set out in the Solicitation Document.

In the case of a Negotiated Competitive Procurement, the evaluation team will form part of the negotiation team.

5.3.6 Local Preference in Price-Based Competitive Procurements

In a price-based Competitive Procurement where the total purchase price up to \$100,000 and the Local Business's Bid meets the requirements set out in the Solicitation Document, the City will give preference to Procurement from a Local Business as follows:

- For Procurements valued at \$50,000 to \$100,000, where the Local Business's total Bid price is not more than 3% higher than the lowest compliant non-local Bid price;
- For Procurements valued at \$10,000 to \$49,999.99, where the Local Business's total Bid price is not more than 5% higher than the lowest compliant non-local Bid price; and
- For Procurements valued under \$10,000, where the Local Business's total Bid price is not more than 10% higher than the lowest compliant non-local Bid price.

5.3.7 Cooperative (joint) Procurement

The Procurement Supervisor or delegate may make cooperative purchasing arrangements with other municipalities or public authorities under which particular Deliverables may be acquired by the City in conjunction with such other partners at a lower overall cost than they might otherwise achieve were they to proceed independently.

Because the cooperative arrangements may require the cooperation of multiple organizations with differing purchasing procedures, deviations from the requirements of this Policy are permitted in such cooperative arrangements provided that the principles set forth in this policy are fully respected.

Where the Procurement Supervisor has effected cooperative purchasing arrangements, Service Areas shall acquire the associated Deliverables in accordance with such cooperative arrangements and not otherwise.

The Manager, Financial Services may authorize exceptions from the foregoing in extenuating circumstances.

5.4 Non-Competitive Procurement Methods

Situations will arise where use of a Competitive Procurement Process is not practical or possible. Any consideration to use a non-competitive selection process must be taken carefully and with an honest view of the conditions surrounding the purchase.

Note that the following situations will not be considered valid reasons for Non-Competitive Procurement:

- Where a Purchaser simply has a preference for a particular brand or supplier;
- Where insufficient time was allowed for the normal Procurement process to occur, or where there was a lack of planning for the purchase; and/or
- Where a Supplier is chosen solely because they were already engaged in the past to provide similar Deliverables.

A Notice of Intent to Award should be posted publicly for a minimum of seven days prior to contracting a Non-Competitive Procurement (except in the case of an Emergency) when the value of the total Contract would be more than \$50,000.

5.4.1 Procurements in an Emergency

When a Service Area Head is of the opinion that an Emergency warrants a non-competitive, Single Source Procurement for Deliverables necessary to respond to and remedy the situation, the Service Area's Director may authorize such a Procurement of Deliverables necessary to respond to and remedy the situation and may award the necessary Contract provided that the value of the Contract does not exceed \$100,000.

If a list of pre-qualified Suppliers is available, it will be used to select the Supplier.

Where the extent or severity of the Emergency warrants a non-competitive Single Source Procurement likely to be in excess of \$100,000, the City Manager may award the necessary Contracts for the purchase of such Deliverables as considered necessary to remedy the situation without regard to the requirement for a bid solicitation provided that the City Manager is satisfied that adequate funds may be appropriated from accounts within the Council approved budgets.

5.4.2 Single Source Procurement

Single Source Procurement may be used if the Deliverables are available from more than one source, but there are valid and sufficient reasons for selecting one Supplier in particular, as follows:

- An attempt to acquire the required Deliverables using a Competitive Procurement Process has been made in good faith, but has failed to identify more than one willing and compliant Supplier;
- The nature of the requirement is such that it would not be in the public interest to solicit competitive Bids, as in the case of security or confidentiality matters;
- Construction, renovations, repairs, maintenance etc. in respect of a building leased by the City may only be done by the lessor of the building, in accordance with a lease agreement;
- The required Deliverables are to be supplied by a particular Supplier having specialized knowledge, skills, expertise or experience;
- Goods are purchased under circumstances which are exceptionally advantageous to the City, such as in the case of a bankruptcy or receivership;
- It is advantageous to the City to acquire the Deliverables from a Supplier pursuant to a procurement process conducted by another public body;
- It is advantageous to the City to acquire the Deliverables directly from another public body or public service body;
- Another organization is funding or substantially funding the acquisition and has determined the Supplier, and the terms and conditions of the commitment into which the City will enter are acceptable to the City;
- The acquisition is for a particular brand of Deliverables that are intended solely for resale to the public and no other brand is desirable and the brand is not available from any other source;
- Where due to abnormal market conditions, the Deliverables required are in short supply; or
- The acquisition is for entertainment at a City event.

5.4.3 Sole Source Procurement

Sole Source Procurement may be used if the Deliverables are available from only one Supplier by reason of:

- Statutory or market-based monopoly;
- A Competitive Procurement Process is precluded due to the application of any Act or legislation or because of the existence of patent rights, copyrights, technical secrets or controls of raw material, and no alternative exists;
- The Deliverable (item, service, or system) is unique to one Supplier and no alternative or substitute exists; or
- There is a need for compatibility with Deliverables previously acquired or the required Deliverables will be additional to similar Deliverables being supplied under an existing Contract (e.g., warranty extension, compatibility with an existing technical system, or renewal of software licences).

5.4.4 Authorization of Single Source and Sole Source Procurements

The following approvals are required for the use of Single Source and Sole Source Procurements:

- Value less than \$10,000 – additional approval not required;
- Value \$10,000 to \$50,000 – Manager, Financial Services and Service Area Director approval;
- Greater than \$50,000 – Service Area Director and City Manager approval.

5.5 Other Procurement Methods

The following methods of Procurement may be used with the assistance of the Procurement Office.

5.5.1 Gathering Information

a) Request for Information (RFI)

The purpose of an RFI is to gather general supplier or product information and gather information regarding the interest of the supplier community for a potential business opportunity. This method may be used when researching a contemplated Procurement and the characteristics of an ideal solution are still unknown.

Responses to an RFI typically contribute to the Competitive Procurement Process, are non-binding, and may lead to an issuance of an RFX. An RFI should be utilized for resolving targeted questions about the required acquisition, market sounding, seeking combinations of industry leading practices, suggestions, expertise and reciprocate concerns and additional questions from respondents. The information collected may also facilitate the selection of the best method of Procurement.

b) Request for Pre-Qualifications (RFPQ)

An RFPQ is used to gather information regarding Suppliers' capability, capacity and qualifications, with the intention of creating a list of pre-qualified Suppliers. An RFPQ is not a legal offer to contract but only an invitation for suppliers to make offers to the City.

This process is intended to reduce effort devoted to the Competitive Procurement Process and may be considered in the following circumstances:

- The work will require substantial project management by the City and could result in a significant cost to the City if the Supplier is not appropriately experienced.
- The Deliverables to be purchased must meet national safety standards.
- The work involves complex, multi-disciplinary activities, specialized expertise, equipment, materials or financial requirements.
- There could be substantial impact on the City's operations if the work is not satisfactorily performed the first time.
- Any other circumstances deemed appropriate by the Procurement Office and Service Area Head.

An RFPQ shall be provided to potential Suppliers that establishes the criteria for pre-qualification, which may include, but are not limited to:

- Experience on similar work (firm and staff assigned);
- References provided from other customers for similar work;
- Verification of applicable licences and certificates;
- Health and safety policies and staff training; and/or
- Financial capability.

The time frame during which pre-qualification will apply may vary depending on the Deliverable. The RFPQ will state the duration of the resulting pre-qualification list.

c) Request for expression of interest (RFEOI)

An RFEOI is used to help assess interest in a particular project when the number of players, market size, or approach to solving a problem is largely unknown. An RFEOI can help in determining the availability of potential Suppliers, compiling a list of Suppliers or determining potential scope of work. An RFEOI may be used as a pre-condition of any Procurement method used by the City.

The receipt of an expression of interest does not create any obligation between the potential Supplier and the City.

5.5.2 Standing Offer Agreements (SOA)

An SOA is an acquisition method that may be used when it is anticipated that there will be a repetitive need for Deliverables. SOAs support timely purchases and to allow the City to take advantage of predetermined prices or discounts. An SOA is not a Contract; it is an offer made by the Supplier to supply Goods and/or Services at pre-arranged prices, under specified terms including the time frame during which the SOA will apply.

SOAs should only be set up with trusted suppliers, ordinarily selected using a Competitive Procurement Process subject to the stipulations of this policy, including those for Supplier performance management.

The time frame during which an SOA will apply may vary depending on the Deliverable. The terms of the SOA will state the duration for which it applies.

5.6 Purchasing Cards

Permanent employees of the City may be issued Purchasing Cards to use for low-value Deliverables based on the need to purchase for the City; the card may be revoked based on change of assignment or location.

Benefits of the Purchasing Card program accrue at the City level by reducing the number of invoices and electronic funds transfer processed and at the Supplier level by reducing their invoicing to the City and the turnaround time for payment.

No employee shall use a Purchasing Card unless authorized by the employee's Service Area Head. Any use of a Purchasing Card shall be in accordance with this Policy and all other applicable City bylaws and policies.

All Purchasing Cards issued will have a predetermined 'single transaction limit' and a 'monthly credit limit' as determined and authorized by the applicable Service Area Head and the Procurement Supervisor. All Purchasing Cards will be blocked from obtaining cash advances.

The dollar limit for individual purchases and monthly spending limit for each employee will be determined by the Service Area Head based on their expected frequency and type of Procurements. Cardholder limits for single or monthly transactions exceeding \$10,000 must be approved in writing by the Manager, Financial Services.

The City assumes liability for all authorized charges on the Purchasing Cards, not the individual cardholder.

5.6.1 Responsibilities and Restrictions

A Purchasing Card shall not be used:

- For purchases other than for City requirements;
- By anyone other than the named cardholder;
- For any purchase of Deliverables that are prohibited under this policy or any other City bylaw or policy;
- When the total purchase price exceeds the single purchase limit on the card; and/or

- To process refunds in the form of Supplier credits or gift cards.

Individual transactions are not to be subject to splitting or stringing, i.e., the practice of making multiple Purchasing Card transactions to circumvent delegated authority levels or to bypass the City's Competitive Procurement Process.

Employees will use Purchasing Cards solely for City business and not for personal purchases or to secure advantage, benefit, favor, or service for self, relatives, friends or associates.

Misuse of the Purchasing Card and/or failure to meet any of the cardholder's responsibilities may result in cancellation of the employee's authority to use a Purchasing Card and/or further disciplinary action up to and including termination of employment.

5.7 Notification of Procurement Opportunities

Notification of competitive Procurement opportunities exceeding \$50,000 shall be made by open, electronic tendering means. Competitive Procurement opportunities below this threshold may also be made by means of open, electronic tendering, but it is not obligatory. Notifications should be posted for a minimum of 21 calendar days unless otherwise specified by the Manager, Financial Services.

Notification of competitive Procurement opportunities by means of open, electronic tendering may be complemented by other means where appropriate, e.g., newspaper advertising. If means other than electronic tendering is used for notification of Procurement opportunities, consideration shall be given to ensuring wide dissemination and equal opportunity for Suppliers.

Source lists may be maintained by the Procurement Office on an exception basis for specific Deliverables if open, electronic tendering or other notification means will not notify the specific Supplier community of the opportunity.

6.0 CONTRACTING

6.1 Contract Management

Once a Procurement award has been completed, whether by Contract, Purchase Order or other form of agreement, the City is legally committed to proceed with the purchase. That commitment can only be rescinded with the negotiated agreement of the Supplier. The negotiation process would incur costs for the City, and the likelihood is high that the negotiated agreement would include a financial penalty payable by the City. Such a situation is always to be avoided.

- All Contracts, Solicitation Documents and addenda or amendments thereto, notices of Contract awards, Bonds, letters of credit, notices of intent to Contract, change orders, Purchase Orders, renewals, extensions, and any other forms of commitment and Contracts will be on terms and conditions approved by the Manager, Financial Services. Any material deviation from the approved terms and conditions of any document may require review by the City's legal counsel under the direction of the Manager, Financial Services.

- All Contracts must be endorsed by the Supplier prior to being endorsed by the City.
- Service Area staff are responsible for providing the Procurement Office with any Contract-related documentation, including change documentation, in a timely manner, to enable Contract changes to be prepared appropriately.
- Contract durations shall be limited to a maximum of five years, including option years, unless otherwise approved by Manager, Financial Services and the City Manager.
- The award of a Contract may be made by way of an agreement or a Purchase Order.
 - A Purchase Order is to be used when the resulting Contract is straight forward and will contain the City's standard terms and conditions.
 - A formal agreement is to be used when the resulting Contract is complex and will contain terms and conditions other than the City's standard terms and conditions.
 - Where a formal agreement is issued, the Purchaser will also issue a purchase order incorporating the formal agreement.
- It shall be the responsibility of the Service Area Head or Director, with input from the Procurement Office, to determine if it is in the best interest of the City to establish a formal agreement with the Supplier.
- Where a formal agreement is required, as a result of the award of a Contract by delegated authority, the Service Area Head shall execute the agreement in the name of the City.
- The Procurement Office will maintain all records and relevant supporting documents for Procurement Contracts in accordance with the City's records management authorities and practices.

6.2 Exercise of Contract Renewal Options

Where a Contract contains an option for renewal, the Purchaser may authorize the Procurement Office to exercise such option provided that:

- The Supplier's performance in supplying the Deliverables is considered to have met the requirements of the Contract; and
- The Purchaser and Procurement Office agree that the exercise of the option is in the best interests of the City.

Where a Contract contains no option for renewal, the Procurement Office may extend the Contract for a period of time no greater than two years from the date of expiration provided that **all** of the following conditions are met:

- The Supplier's performance has met or exceeded the requirements of the Contract;
- The total cumulative Contract duration does not exceed five years, unless otherwise approved by the Manager, Financial Services and the City Manager;

- The Procurement Office and Purchaser agree in a written explanation that the renewal is in the best interests of the City based on market conditions or an analysis of future conditions, and that cost savings or cost avoidance can be obtained by a renewal; and

Pursuant to section 3.5.2 of this policy, a report will be provided to Council describing how the above-noted conditions have been met.

Inflationary increases for Contract renewal shall be limited to the annual Consumer Price Index for Whitehorse, Yukon, unless the Supplier can demonstrate that the Supplier's costs have increased significantly from the original Contract price and the Supplier's cost increases can be independently verified by the City.

6.3 Contract Amendments and Revisions

No amendment or revision to a Contract shall be made unless the amendment is in the best interests of the City as approved by the Procurement Office.

No amendment that changes the price of a Contract shall be agreed to without a corresponding written change in requirement or scope of work, a copy of which shall be provided to the Procurement Office once it is approved by the Service Area Head.

Purchasers and the Procurement Office may authorize amendments to Contracts provided that the total amended value of the Contract, including all cumulative changes, is within the approval authority of the Purchaser. Where expenditures for the proposed amendment combined with the price of the original Contract exceeds Purchaser authority, the change must be escalated to the authority authorized to approve the total value.

6.4 Guarantees of Contract Execution and Performance

The Solicitation Document may require that a Bid be accompanied by a Bond or other similar security to guarantee entry into a Contract. In addition, the successful Supplier may be required to provide:

- A performance Bond to guarantee the faithful performance of the Contract; and/or
- A payment Bond to guarantee the payment for labor and materials to be supplied in connection with the Contract.

Ordinarily, the City will require a Bond for Construction Contracts valued at \$500,000 or higher.

The Purchaser and Procurement Office may select the appropriate methods to guarantee execution and performance of the Contract. Methods may include one or more of, but are not limited to, financial Bonds or other forms of security deposits, provisions for liquidated damages, progress payments, and holdbacks.

The Purchaser and Procurement Office shall ensure that the guarantee methods selected will:

- Not be excessive but sufficient to cover financial risks to the City;
- Provide flexibility in applying leverage on a Supplier so that the penalty is proportional to the deficiencies; and
- Comply with applicable statutes and regulations.

Financial Bonds for Contract performance shall only be required where the City will be exposed to costs if the Supplier does not complete the requirements of the Contract.

7.0 OTHER PRACTICES

7.1 Fairness Monitoring

The Procurement Office, through its involvement in and monitoring of the Procurement process and practices, generally has the responsibility to oversee that Procurements are conducted in a fair and consistent manner, free of conflict and/or bias.

However, when planning a specific Procurement, the City may consider the use of an independent Fairness Monitor where an enhanced assurance of fairness is desired. This will generally be reserved for complex Procurements, typically, although not always, with a high value. A staff request to hire a Fairness Monitor must be documented, with a supporting rationale, and must be approved by the City Manager. Council may also request the use of a fairness monitor.

Where the use of a Fairness Monitor can be anticipated, the associated cost should be included in the project budget. Otherwise, a budget amendment may be required.

7.2 Supplier Management

A Service Area Head may monitor and document annually the performance of Suppliers providing Deliverables with a value greater than \$50,000. Service Area Heads/Purchasers will be responsible to document Supplier performance in the Contract file by means of a Supplier performance evaluation form.

The Service Area Head shall document evidence and advise the Procurement Office in writing where the performance of a Supplier has not satisfactorily met Contract specifications, or for health and safety violations.

In the event of poor Supplier performance, the Procurement Office and Service Area Head/Purchaser will develop a Supplier performance corrective action plan, with the participation of the Supplier, in an effort to bring performance back to an acceptable level. If acceptable performance is not restored, the City Manager may take appropriate action to reduce risk to the City, including terminating a Contract, and prohibiting the unsatisfactory Supplier from bidding on future Contracts.

Supplier performance records will be posted internally on the City's intranet for three years, and shall be reviewed by all Service Area Heads or Purchasers prior to the acceptance of any Bid. A Bid received from a Supplier whose performance is deemed unsatisfactory will not be accepted, unless otherwise approved by the City Manager.

For the purposes of this section, the term "Supplier" may include any principal, director or officer of that Supplier, whether submitting Bids directly or indirectly through another legal entity.

7.2.1 Exclusion of Suppliers

The City may, in its absolute discretion, exclude a Supplier from participating in a Procurement process or reject a Supplier's Bid, providing the Supplier with a written explanation for the exclusion and setting out applicable terms, if:

- The Supplier has failed to demonstrate that it has met the requirements of a performance corrective action plan intended to bring performance back to an acceptable level or other Supplier management plan initiated by the City;
- The Supplier has failed to declare a potential Conflict of Interest when responding to a Solicitation Document; and/or
- The Supplier, or any of its officers or directors has been engaged in, or is currently engaged in, directly or indirectly, a lawsuit against the City, its employees or elected officials or appointed officers in relation to:
 - any other Procurement process;
 - any other Contract for Deliverables; and/or
 - any matter arising from the City's exercise of its powers, duties, or functions.

A Supplier subject to such an exclusion may apply to City Council for a review of the exclusion.

7.3 Bid Dispute Resolution

All Bidders shall have an opportunity to advise the Procurement Office, prior to the deadline of the enquiries as outlined in the Solicitation Document, if a Bidder needs to address any discrepancies, errors, concerns and/or omissions in the Solicitation Document, or if they have any questions or clarifications needed.

After the award of the Contract, Bid challenges pertaining to those matters shall not be considered by the City.

Suppliers who have submitted an unsuccessful Bid in a Procurement process will be offered the opportunity for a thorough debriefing. The goal of the debriefing is to assist Suppliers in improving their proposals for future projects. The debriefing will only discuss the Supplier's point rating in the Bid evaluation. Areas for improvement will be discussed on a comparative basis only, without divulging the point values of other Suppliers or any proprietary information. Debriefings may be either verbal or written at the discretion of the Service Area Head and Procurement Supervisor.

In the instance of a Bid dispute which has not been resolved through a Supplier debrief, the City shall put into place a Bid challenge panel to review the Bid dispute, comprising:

- A representative of Procurement Office;
- A representative of the Service Area requesting the Procurement;
- The Manager, Financial Services
- Any other party deemed appropriate which may include an independent, non-City employee.

The Bid challenge panel's responsibilities include, but are not limited to, reviewing and making decisions on Bid irregularities or other issues pertaining to a Bid.

REPEAL OF EXISTING POLICY

The Purchasing and Sales Policy adopted by Council resolution 2018-22-05, including all amendments thereto, is hereby repealed as of December 31, 2020.

FORCE AND EFFECT

This policy shall come into full force and effect on January 1, 2021.

Supporting References

Municipal Act RSY 2002, c.154

History of Amendments

Date of Council Decision	Reference (Resolution #)	Description
August 10, 2020	2020-18-12	Initial Approval Date

Appendix A – Items Exempt from this Procurement Policy

The purchasing methods described in the Procurement Policy do not apply to the following:

1. Councilor/Employee Training and Education
 - a) Registration, accommodation and tuition fees for conferences, conventions, courses and seminars
 - b) Magazines, books and periodicals
 - c) Memberships
 - d) Staff development or workshops
2. Refundable Councilor/Employee Expenses
 - a) Advances
 - b) Meal allowances
 - c) Travel
 - d) Miscellaneous expenses
3. Employee/Employer's General Remittances/Expenses
 - a) Payroll deduction remittances
 - b) Council/Committee/Employee remuneration
 - c) Licences/Memberships
 - d) Agencies
 - e) Damage claims
 - f) Insurance premiums
4. Other
 - a) Levies
 - b) Utilities
 - c) Postage
 - d) Bailiff or collection agencies
 - e) Licensing
 - f) Any payments required to be made by the City under statutory authority
 - g) Inventory for resale (sale price of items is under \$5)
 - h) Banking services
 - i) Debt payments
 - j) Borrowing/debt arrangements
 - k) Payment of damages or settlements
 - l) Petty cash replenishments
 - m) Insurance
 - n) Legal services
 - o) Hiring of negotiators, internal investigators, or actuaries
 - p) Property assessments

Appendix B – Procurement Authority Matrix

Applicable taxes and duties shall be excluded in determining the Procurement limit of the Approval Authorities listed below. An Approval Authority may authorize a delegate, subject to section 3.4.4 of this policy.

Dollar Value	Tool / Procurement Process	Approval Authority (lowest level)	Policy Section
Petty Cash Under \$100	Petty Cash Voucher	Service Area Head (or delegate)	5.2
Under \$10,000	Purchasing Card Purchase Order	Service Area Head (or delegate)	5.2
Greater than \$10,000 to \$50,000	Informal Quotation (3 written quotes)/Invitational competition	Service Area Head (or delegate)	5.3.1
Greater than \$50,000 to \$100,000	RFQ / RFP / Negotiated Competitive Procurement	Service Area Head (or delegate) and Procurement Office	5.3.2 5.3.4
Greater than \$100,000 to \$500,000	RFP / RFT/ Negotiated Competitive Procurement	Manager, Financial Services (or delegate) and Procurement Office	5.3.3 5.3.4
Greater than \$500,000	RFP / RFT/ Negotiated Competitive Procurement	City Manager (or delegate)	5.3.3 5.3.4
Greater than \$10,000 to \$50,000	Single Source or Sole Source	Director (or delegate) and Manager, Financial Services	5.4.4
Greater than \$50,000	Single Source or Sole Source Notice of Intent to Award	Director (or delegate) and City Manager (or employee with delegated authority for approval)	5.4.4
Under \$100,000	Emergency Procurement	Director (or delegate)	5.4.1
Greater than \$100,000	Emergency Procurement	City Manager (or delegate)	5.4.1
Total cumulative value under \$100,000	Contract Amendment / Revision	Procurement Office and Service Area Head (or delegate)	6.3
Total cumulative value greater than \$100,000 to \$500,000	Contract Amendment / Revision	Manager, Financial Services and Director (or delegate)	6.3
Total cumulative value greater than \$500,000	Contract Amendment / Revision	City Manager (or delegate)	6.3