



# **Policy**

## **for the Procurement of**

### **Goods, Services and**

#### **Construction**

As Approved by Common Council December 5, 2011

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## **1.0 PROCUREMENT POLICY STATEMENT**

The City of Saint John recognizes that the taxpayers of this City expect and have the right to receive a high level of service at the lowest possible cost.

The City of Saint John recognizes that increased competition results in lower costs.

Therefore the following policy applies to the procurement of all *Goods, Services* and/or *Construction* for The City of Saint John;

*Goods, Services* or *Construction* with a total cost of \$2,500 or less, shall be obtained by way of the Corporate Purchasing Card or a *Purchase Order*.

All *Goods, Services* or *Construction* with a total cost in excess of \$2,500 are to be obtained by way of a competitive bidding process as described in this policy and by the following methods;

- if *Goods* are valued at less than \$25,000, *Services* are valued at less than \$50,000, or *Construction* is valued at less than \$100,000, bids may be invited,
- if *Goods* are valued at \$25,000 or more, *Services* are valued at \$50,000 or more, or *Construction* is valued at \$100,000.00 or more, public tenders will be called.

The City Manager has the authority to approve all expenditures up to a value of \$75,000, in accordance with the application of this policy and upon the identification of funds in *Council* approved *Budgets*. Any expenditure which exceeds this limit or for which funds are not available in the budget, requires the approval of Common *Council*.

Subject to legislated requirements related to thresholds and processes, the City Manager has the express authority to approve any and all amendments to related Procurement Procedures of this policy.

All dollar amount approval thresholds stated in this policy are excluding taxes.

This policy and the related procedures shall be administered by Materials Management under the direction of the City Manager.

## **2.0 INTRODUCTION**

Materials Management is responsible for the Purchase of Goods and Services and the procurement of Construction Contracts for all City Departments, except the procurement of infrastructure construction Contracts and Professional Services required by the Engineering Section of the Municipal Operations Department.

Materials Management is the City's link to the vendor community on all matters relative to the procurement of Goods, Services and Construction.

Materials Management shall prepare, or assist with the preparation of, all Bid documents, related reports and recommendations for consideration, approval and Award by The City Manager and/or Common Council on all procurement related matters.

Any deviation from this policy will be referred to the City Manager for appropriate action.

### 3.0 **DEFINITIONS**

In this policy, the following capitalized words and expressions shall have the following meanings:

**"Amendment"** means an increase or decrease to an existing Contract related to a change in scope that is unanticipated;

**"Award"** means authorization to proceed with the Purchase of Goods, Services and Construction from a chosen Supplier;

**"Best Value"** means the optimal balance of performance and cost determined in accordance with a pre-defined evaluation plan;

**"Bid"** means an offer or submission from a Supplier in response to a Bid Solicitation;

**"Bid Solicitation"** means a formal request for bids that may be in the form of a Request for Quotations, Request for Qualifications, Request for Tenders, Request for Proposals or Request for Standing Offer;

**"Budget(s)"** means Council approved annual General Fund Operating and Capital Budgets and Saint John Water Operating and Capital Budgets, including authorized revisions;

**"City"** means The City of Saint John;

**"Construction"** means a Construction, re-Construction, demolition, repair or renovation of a building, structure, property, land or other non infrastructure related civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, the supply of products and materials and the supply of equipment and machinery if they are included in and incidental to the Construction, and the installation and repair of fixtures of a building, structure or other non infrastructure related civil engineering or architectural work, but does not include Professional Services related to the Construction Contract unless they are included in the procurement;

**"Consulting Services"** means assistance to management, including but not limited to the areas of strategic analysis, organizational design, change management, policy development, feasibility studies, technical design, tendering assistance, construction/contract administration and other services intended to assist decision making within the organization;

**"Contract"** means a binding agreement by way of a Purchase Order or Purchase Order incorporating a formal agreement or a formal agreement between two or more parties that creates an obligation to do or not to do a particular thing;

**"Council"** means the Mayor and Common Council of The City of Saint John;

### 3.0 **DEFINITIONS (Cont'd)**

**"Department Head"** means the person appointed by Council or the City Manager to be responsible for the operation of a City Department. This term can apply to, but is not limited to, the positions of; Commissioner, Fire Chief or Department Manager;

**"Disposal"** means the removal of material from the City by sale, trade-in, alternative use or destruction;

**"Division"** - means an organizational unit, within a Department headed by a Division Manager;

**"Division Manager"** is the person appointed by Council, the City Manager or a Department Head to be responsible for the operation of a Division. This term can apply to, but is not limited to, the position of; Deputy Commissioner, Deputy Fire Chief, Director or Division Manager;

**"Electronic Tendering"** means the use of a computer-based system directly accessible by Suppliers irrespective of their location that provides them with information related to Bid Solicitations; ie –NB Online Web Site and/or City of Saint John Home Page;

**"Fair Market Value"** means the price that would be agreed to in an open and unrestricted market between knowledgeable and willing parties dealing at arm's length who are fully informed and not under any compulsion to transact;

**"Follow-On Contract"** means situations where the City, in the original Contract or Bid Solicitation document, has indicated the potential for the Award of subsequent phases of a project to the successful service provider;

**"Goods"** means chattels including,

- a. the costs of installing, operating, maintaining or manufacturing such chattels, and
- b. raw materials, products, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a Construction Contract;

**"Lowest Compliant Bid"** means the Bid that will provide the City with the desired Goods, Services and Construction at the lowest cost and which meets all the specifications;

**"Materials Management"** means the Purchasing Agent and his/her designated staff responsible for performing the procurement functions of the City, in accordance with this Policy;

**"Purchase"** means to acquire Goods, Services or Construction by outright purchase, rental, lease or trade;

### 3.0 **DEFINITIONS (Cont'd)**

**"Professional Services"** means Services requiring the skills of Professionals for a defined service requirement or for a specific project related deliverable including but not limited to the areas of health and wellness, engineering, architecture, design, planning, information technology, financial auditing and fairness commissioners;

**"Purchase Order"** means a written offer to a Supplier formally stating all terms and conditions to Purchase Goods, Services or Construction or a written acceptance of an offer received in accordance with this policy;

**"Quote"** means a Bid submitted in response to a Request for Quotation;

**"Security Deposit"** means a deposit of securities by a Supplier that the City may convert under defined conditions to fulfill the Suppliers' contractual obligations;

**"Services"** means the provision of labour or labour and materials by tradesmen including but not limited to plumbers, electricians, cleaners, auto repair, etc.;

**"Special Circumstance"** means a) an event that is exceptional or could not be foreseen and poses a threat to the health, safety or welfare of the public, or b) an event that could cause loss or damage to public or other property or c) an event that has disrupted essential services provided by the City that must be re-established without delay;

**"Standing Offer"** means an offer from a Supplier that allows the City to Procure/Purchase frequently ordered Goods, Services or Construction from said Supplier at prearranged prices, under set terms and conditions;

**"Substantive Objection"** means a written objection provided to Materials Management or the Division Manager by an interested party giving specific reasons for the objection to a specific Bid Solicitation or anything pertain thereto and subject to the proviso that the objection is not precluded by legislation or applicable trade agreements;

**"Supplier"** an individual or a corporation in the business of providing goods, services or construction materials and/or services for a fee;

**"Tender"** means a written, formal offer from a Supplier, received in response to an advertised Request for Tenders.

**"Terms of Reference"** includes any and all stated objectives, scope, deliverables, specifications, terms and conditions of a Bid Solicitation.

To establish the definition of any other purchasing term not herein included, reference shall be made to the latest edition of the *National Institute of Governmental Purchasing Guide*.

## **4.0 AUTHORITIES**

### **4.1 Spending Limits**

Provided that all associated transactions are in accordance with the requirements of this Policy, spending authorities for the procurement of Goods, Services and Construction Contracts are delegated as follows:

<u>Spending Approval</u>	<u>Category</u>
a) Council.....	More than \$75,000
b) City Manager .....	\$75,000 or less
c) Department Heads.....	\$25,000 or less
d) Division Managers.....	\$15,000 or less
e) Line Manager .....	\$7,500 or less

### **4.2 Responsibilities and Authority**

- a) Department Heads are responsible for procurement activities within their departments and Divisions and are accountable for achieving the specific objectives of the procurement policy.
- b) Division Managers have the authority to Award Contracts in the circumstances specified in this policy provided that the delegated power is exercised within the limits prescribed in this policy, and the requirements of this policy are met.
- c) Division Managers shall, upon request, provide to Materials Management evidence that the Contract pricing represents Fair Market Value.
- d) Materials Management is responsible for,
  - i. providing professional procurement advice and services,
  - ii. monitoring compliance with this policy and any applicable legislation and Trade Agreements,
  - iii. notifying Division Managers or Department Heads, in advance if possible, of non-compliance with this Policy and applicable legislation and Trade Agreements, and
  - iv. notifying the City Manager and/or Council of the non-compliance.
- e) For Awards of value equal to the spending limits established at section 4.1b) to e), Materials Management may Award a Contract on behalf of the City, provided that



Materials Management is in receipt of an approved and funded requisition and the requirements of this policy are met.

- f) The City Manager is authorized to instruct Department Heads not to Award Contracts but to submit recommendations to Council for approval and the City Manager may provide additional restrictions concerning procurement where in his opinion or in the opinion of Materials Management, such action is considered necessary and in the best interest of the City.

#### **4.3 Requirement for Approved Funds**

- a) The authority to Award a Contract is subject to the identification and availability of sufficient funds in appropriate accounts within the Budget(s).
- b) Where Goods and Services are routinely purchased or leased on a multi-year basis, the authority to Award a Contract is subject to the following conditions:
  - i. the identification and availability of sufficient funds in appropriate accounts for the current year within the Budget(s).
  - ii. the requirement for the Goods or Services will continue to exist in subsequent years and, in the opinion of the Commissioner of Finance, the required funding can reasonably be expected to be made available, and
  - iii. the Contract has a provision in it that the supply of Goods or Services in subsequent years is subject to the approval by Council of the Budget estimates to meet the proposed expenditures.
- c) The City Manager may reject all Purchase requests for Contracts for which sufficient funds are not available and identified unless, in the opinion of The City Manager, the funding shortfall is minimal and alternative funding has been identified.

#### **4.4 Restrictions**

- a) The spending limits stipulated at section 4.1 may not be divided into two or more parts to avoid the application of the provisions of this policy.
- b) No person shall Award a Contract where Materials Management has determined that the provisions of this policy have not been adhered to and has so advised the person responsible for the procurement.
- c) Materials Management shall reject all Purchase requisitions for Services where the Services could result in the creation of an Employee - Employer Relationship.

#### **4.5 Total Project Cost**

To determine whether a Contract falls within the prescribed spending limits set out at section 4.1, the Contract amount shall be the sum of all costs to be paid to the Supplier under the Contract, excluding all taxes.

#### **4.6 Prescribed Council Approval**

- a) Notwithstanding any other provision of this policy, the following Contracts are subject to Council approval:
- i. any Contract prescribed by Statute to be made by Council,
  - ii. where the Bid price is higher than the Budget(s) and the necessary adjustments cannot be made,
  - iii. where the revenue amount proposed for acceptance is lower than the Budget(s) and the necessary adjustments cannot be made,
  - iv. where a Substantive Objection emanating from the Bid Solicitation has been filed with the Division Manager or with Materials Management,
  - v. where a major irregularity precludes the Award of a Tender to the Supplier submitting the lowest bid,
  - vi. where authority to approve has not been expressly delegated, and
  - vii. where a Contract is a result of a public private partnership (“P3”) opportunity.
- b) No provision of the policy precludes a Division Manager or Materials Management from submitting a recommendation for Award to Council where: in the opinion of a Division Manager or Materials Management, it is in the best interest of the City to do so.

## **5.0 BID SOLICITATION METHODS**

### **5.1 General**

The following methods for the procurement of Goods, Services and Construction are in accordance with the *Public Purchasing Act* of the Province of New Brunswick and the Agreement on Internal Trade:

<b>Procurement Methods</b>	<b>Project Cost</b>
Petty Cash	\$75 or less,
Corporate Purchasing Card or Other Means Approved by the Commissioner of Finance	\$2,500 or less,
Request for Quotation or Proposal (Invitation to Bid)	Goods Less Than \$25,000, Services Less Than \$50,000, Construction Less Than \$100,000
Request for Tender (Advertised Public Tender)	Goods \$25,000 and greater Services \$50,000 and greater Construction \$100,000 and greater
Request for Proposal (Advertised Call for Proposals)	Goods \$25,000 and greater Services \$50,000 and greater Construction \$100,000 and greater
Request for Standing Offer	Any cost
Non-Competitive Purchase	Any cost

Each procurement method is more fully described in Sections 5.2 to 5.12 inclusive.

Requests for Quotation and Public Requests for Tender shall be used where a requirement can be fully defined and Best Value for the City can be achieved by an Award made on the basis of the Lowest Compliant Bid.

The Request for Proposal method shall be used,

- i. where to achieve Best Value, the Award will be made on an evaluated dollar per point or other method involving a combination of mandatory and desirable requirements, based on clearly defined criteria,
- ii. where the requirement is best described in a general performance specification,
- iii. where innovative solutions are sought, and
- iv. where cost is not the sole determining factor in making an Award.

**5.2 Petty Cash / Purchases Under \$75**

- a) A Division Manager is authorized to establish a Petty Cash fund in an amount necessary to meet the requirements of the Division for the acquisition of Goods, Services or Construction having a per transaction value of \$75 or less.
- b) Expenditures not exceeding \$75, including purchases of Goods, Services and Construction, may only be made from Petty Cash when it is not feasible to use a Corporate Purchasing Card.
- c) Purchases made pursuant to Section 5.2 and 5.3 shall be made from the competitive marketplace wherever possible.
- d) The dollar limit referred to at Section 5.2 a) does not apply to registration or search fees and land transfer tax payable in real estate transactions.
- e) All petty cash disbursements shall be evidenced by vouchers and shall be processed through the Commissioner of Finance.

**5.3 Purchases Under \$2,500**

- a) Payment for the Purchase of Goods, Services or Construction not exceeding \$2,500 incurred in the general administration of a Division may be made using:
  - i. a properly authorized corporate procurement card,
  - ii. a properly authorized Purchase Order, or
  - iii. a Payment Voucher, from a supplier's invoice, where i or ii cannot be used.
- b) The method used to Purchase the Goods, Services or Construction shall demonstrate that Fair Market Value was achieved.
- c) Subject to subsection 5.3d), whenever possible and practicable, the method used to make a Purchase not exceeding \$2,500 shall include evidence that a minimum of three verbal or written Quotes were obtained.
- d) The Division Manager may directly select a Supplier to provide Professional Services without obtaining Quotes where the total cost of the Professional Services does not exceed \$2,500.
- e) For a Purchase not exceeding \$2,500, the Division Manager may delegate his/her authority to a designate provided the person to whom he/she delegated his/her authority complies with the requirements of this policy.

## **5.4 Corporate Card**

### a) General

This section outlines the procedure for the use of the corporate purchasing card for the Purchase of items not exceeding \$2,500.00, exclusive of tax. The total monthly limit per cardholder will be established by Materials Management.

The purchasing card is designed for the Purchase of small dollar necessary items in an efficient manner and with minimal administrative work. The general criteria for using the corporate purchasing card are as follows:

- i. \$2,500.00 (excluding taxes) or less per transaction;
- ii. larger purchases **MUST NOT** be broken down into smaller purchases in order to meet the transaction limit set out at paragraph i;
- iii. the cardholder shall obtain a receipt at the point of sale and verify it for accuracy. The cardholder shall retain receipts and charge slips and record on log for tax and audit purposes;
- iv. some vendors have been “blocked” from usage in the program. If the card is presented to any of these vendors, the transaction will be declined;
- v. the cardholder is required to account for all purchasing card transactions on a log form provided by the City for this purpose. Each month, the log and receipts are to be submitted to the cardholder’s Supervisor for review;
- vi. although the card is issued in the cardholder’s name, it is the property of the City and is for City purchases only. Under no circumstances may the purchasing card be used for personal purchases;
- vii. the purchasing card is user specific. No one shall attempt to purchase an item using a card issued to another person. Delegation of authority is not permitted in making transactions;
- viii. all maintenance for the purchasing card is handled by Materials Management. Any update or modification to a cardholder’s name, address and transaction limits shall be made through Materials Management.

### b) Program Responsibility

- i. Materials Management is responsible for maintaining a file of individual daily transaction errors to assist in the resolution of potential problems;
- ii. Materials Management is responsible for administering the overall program.

- iii. Accounts Payable is responsible for approving the consolidated purchasing card statement for payment.
- iv. Materials Management is responsible for the reconciliation of monthly activity logs
- v. The cardholder:
  - must ensure the corporate purchasing card is signed upon receipt and must return the acknowledgment letter to Materials Management confirming receipt of card.
  - is responsible to notify the Bank and Materials Management IMMEDIATELY if the purchasing card is lost or stolen.
  - is responsible to contact the Bank when disputing a charge by contacting the Customer Service at the number noted on the purchasing card.
  - must retain all receipts and credit card slips to attach to the activity log which must be submitted monthly, within 2 weeks of receipt of the cardholder statement.

**Failure of the cardholder to adhere to these requirements may, at the sole discretion of Materials Management, result in loss of corporate card privileges**

c) Monthly Payment Procedure

- i. A summary statement is sent to Accounts Payable for payment processing,
- ii. an individual statement is sent to each cardholder,
- iii. it is the responsibility of the approving Supervisor of the cardholder to review the monthly individual statement and then forward to Materials Management for data entry,
- iv. the signature of the Supervisor indicates that all charges for the cardholder have been reviewed and are in compliance with the City policies and procedures.

d) Protecting the Corporate Card

The cardholder must:

- i. Sign the back of a new card as soon as he/she receives it,
- ii. Make a note of the card information and the number.

- iii. Never leave the card unattended at work, and never leave the card in a vehicle,
  - iv. Always check the card when it is returned to him/her after a Purchase, to ensure that it is his/hers.
  - v. When traveling, carry the card with him/her, and make sure it is in a secure location,
  - vi. Report lost or stolen card immediately
- e) Summary

This program is designed to be simple and easy to use, providing the cardholder with what is needed to perform his/her job more efficiently. However, there is a need to maintain appropriate controls to ensure the on-going success of the program.

The Cardholder is expected to exercise good judgment and act responsibly when using the card. The card is issued in the Cardholder's name and all activity will be assumed to have been incurred by him/her. The Cardholder must maintain his/her Purchasing Card transaction log accurately and always retain his/her receipts with his/her log for audit and tax purposes.

### **5.5 Request for Quotation (RFQ)**

For the City to obtain maximum value for every tax dollar, the following procurement method shall be followed for all Purchases with a value as stated at s. 5.1 for Request for Quotations:

- a) The Request for Quotation is a Bid Solicitation where Quotes are obtained from Suppliers without formal advertising or receipt of sealed Bids.
- b) Requirements estimated at the thresholds identified at s. 5.1 for RFQ shall be handled by the RFQ procedure. However, there may be requirements estimated at less than the limits identified at s. 5.1 for RFQ, where Bids may be solicited using a Request for Tender or a Request for Proposal.
- c) The Division Manager shall provide to Materials Management a purchase requisition or written request containing the relevant specifications, terms and conditions for the Purchase of Goods, Services or Construction.
- d) Materials Management shall:
  - i. review the specifications, terms and conditions relevant to the acquisition of Goods, Services or Construction,

- ii. when necessary, suggest changes or provide other information to the Division Manager to promote competitive bidding,
  - iii. prepare Bid documents,
  - iv. give notice of the Bid Solicitation:
    - by using the Electronic Tendering system, or
    - by requesting submissions from, when possible or practicable, a minimum of three bidders contained on a list of registered vendors maintained by Materials Management and who appear best qualified to meet the provisions of the quotation, or
    - by any combination thereof which will result in appropriate notice being given,
  - v. at the time designated for receipt of bids, publicly open the Bids, and
  - vi. review the bids with the Division Manager to ensure compliance with the Terms of Reference.
- e) The City Manager, Department Head, Division Managers, or Materials Management on behalf of a Division Manager, may Award Contracts emanating from a Bid Solicitation not exceeding the limits identified at section 4.1 provided that:
- i. sufficient funds are available and identified in appropriate accounts within Council approved budget estimates including authorized revisions,
  - ii. the Award is to the Lowest Compliant Bid,
  - iii. Materials Management is in receipt of a funded requisition, and
  - iv. the provisions of this policy are followed.
- f) Where the discretion referred to in paragraph e) is exercised, written documentation respecting the Award of the Contract is to be kept on the procurement file.
- g) The Purchase of Goods, Services or Construction referred in Subsection 5.5b) shall be made through the issue of a Purchase Order by Materials Management or a standing offer.



## **5.6 Public Tender**

### a) General

The City of Saint John, as a means of obtaining maximum competition for City business and to afford all interested parties an opportunity to compete for this business, has approved the following procurement method for all expenditures in excess of \$25,000 for Goods, \$50,000 for Services and \$100,000 for Construction.

The City may, at its sole discretion, divulge the names of those who have taken out Tender documents to any other bidder or organization.

These procedures for the preparation of Tenders and for the public opening of Tenders apply to all public Requests for Tenders issued on behalf of the City for the Purchase of Goods or Services or Construction. They do not apply to invited bids or to Requests for Proposals.

### b) Procedures

- i. An advertised Public Tender shall be used for Purchases exceeding the limits specified at s. 5.1 for "Request for Tender" where all of the following criteria apply:
  - two or more sources are considered capable of supplying the requirement,
  - the requirement is adequately defined to permit the evaluation of Tenders against clearly stated specifications,
  - it is intended to accept the Lowest Compliant Bid.
- ii. The Division Manager shall provide to Materials Management a written request containing the relevant specifications, terms and conditions, and estimated total cost for the acquisition of Goods, Services or Construction.
- iii. Materials Management shall follow the procedure prescribed at Subsection 5.5d) with the following modifications:
  - Electronic Tendering shall be used for notification, complemented, if appropriate, by other means,
  - Sealed Tenders with a public opening shall be required,
  - The closing time for receipt of Tenders shall be that stated in the Tender advertisement. The Tender advertisement shall indicate the location of the box for receipt of Tenders. The advertisement shall also state the location of the public Tender opening.

Immediately following closing time the box shall be sealed by Materials Management, and removed to the Tender opening room.

- It is the responsibility of each of the Tenderers to ensure that its Tender is placed in the Tender box. The City accepts no responsibility for Tenders that have been mailed, hand delivered or left outside the Tender box.

c) Tender Opening

Decisions, at the Tender opening, concerning the validity of a Tender, are final and not subject to appeal.

Public Tenders will be opened in a room where the public as well as those submitting Tenders are welcome. Tenders will be opened, checked for content and the name and amount of the Tender announced.

Tenders submitted by fax, electronically or by any other means will not be considered.

Common Council has appointed a Tender opening committee which shall reject Tenders for the following reasons:

- i. Absence of, or an insufficient or incorrect, Bid bond or Security Deposit,
- ii. Unsigned Tender,
- iii. Failure to Bid any single item when specifications require all items to be Bid,
- iv. The submission of more than one Tender by the same tenderer - in which case all Tenders submitted by the said Tenderer shall be rejected,
- v. A change in the written or numeric bid price on a Tender form that has not been initialed by the bidder. The use of white out or correction film is considered a change and must be initialed by the bidder,
- vi. The absence of required documents or the failure to comply with the Tender documents,
- vii. Tenders received after the closing time for Tenders.

Tenders which are rejected by the Tender opening committee will be returned to the bidder at the address contained in the Tender documents.

Prices of rejected Tenders will not be announced at the Tender opening.

Tenders will be considered even in the event they contain any of the following errors:

- i. Error in mathematics - whether this involves the extension of a unit price or an error in addition, the mistake will be corrected and the correct total will be used for evaluation purposes and will be binding on the Tenderer.

- ii. Conflict between the written Bid and the numerical Bid. In all cases the total Bid is corrected to reflect the written Bid, whether lump sum or unit price,
- iii. Omission of "provisional sum" amounts that are established by the department and do not affect the competitive nature of the Tender. These amounts normally cover unspecified extra work. If omitted on the Tender, the amount is added and the total price corrected. Provisional sums in this instance are those which the bidder is requested to write in on the Tender form. Provisional sums which are specified in the specifications to be included in lump sum bids must be so included and each tenderer's price will be assumed to contain such prices.

d) Correction or Withdrawal of Tenders before Tender Opening

Correction or withdrawal of Tenders already placed in the Tender box will only be permitted where an amending letter signed by the person who signed the Tender in a sealed envelope is placed in the Tender box prior to Tender opening. The amending letter must clearly specify that the Tenderer intends to withdraw its Tender or, in the case of an Amendment, clearly indicate the part of the Tender that the amending letter is intended to replace.

Amending letters received by Fax, electronically or by any other means will not be considered.

e) Correction or Withdrawal of Tenders after Tender Opening

No tenderer is permitted to amend or withdraw its Tender after Tender closing. If a tenderer finds an error has been made in his Tender, said Tenderer must leave the Tender as is, or request from Council permission to withdraw the Tender.

Requests to Withdraw must be submitted in writing, in original format and signed by the same individual who signed the Tender, to the Mayor and Council, c/o The Common Clerk stating the reason(s) for the request.

Council will decide whether or not to grant the request based on the information supplied by the bidder and a recommendation from staff.

Council will not necessarily allow the withdrawal and may require the bidder to perform the Contract or forfeit the Bid deposit.

- f) Materials Management shall forward to the appropriate Division Manager a summary of the procurement and recommend the Award of Contract to the Lowest Complaint Bid.
- g) Materials Management, on behalf of the Division Manager, shall prepare and submit a recommendation for Award to either Common Council, or the City Manager.

- h) The City Manager or his Designate may Award Tenders for Goods or Services or Construction Contracts (up to \$75,000) emanating from a Request for Tender provided that:
  - i. the Award is to the Tenderer who submitted the Lowest Compliant Bid,
  - ii. sufficient funds are available and identified in appropriate accounts within the Budget including authorized revisions,
  - iii. Materials Management is in receipt of an approved requisition, and
  - iv. the requirements of this policy have been met.
- i) Where the authority referred to in Subsection 5.6 h) is exercised, written notification respecting the Award of the Contract is to be kept in the procurement file.
- j) The Division Manager shall comply with the provisions of Section 3.5 "Contractual Agreement "of the procurement procedures regarding the Award of Contract.
- k) A Standing Offer, as defined in Section 5.10, may be used where appropriate, for purchases resulting from a Request for Tenders.

### **5.7 Request for Proposal - RFP**

- a) A Request for Proposal may be used where one or more of the criteria for issuing a Request for Quotation or a Request for Tender cannot be met, such as in the following circumstances:
  - i. owing to the nature of the requirement, Suppliers are invited to propose a solution to a problem, requirement or objective and the selection of the Supplier is based on the effectiveness of the proposed solution rather than on price alone, or
  - ii. it is expected that negotiations with one or more bidders may be required with respect to any aspect of the requirement, or
  - iii. it has been reasonably determined that the cost of Professional Services for a given project will be greater than \$50,000.
- b) A Division Manager who wishes to proceed with an RFP shall provide Materials Management with a written request containing, as a minimum: the specifications of the goods or the scope of the services, the Terms of Reference and the evaluation criteria to be applied in assessing the proposals submitted.
- c) The City Manager or his designate may select a *Supplier* to provide Professional Services without competition where:

- i. the estimated total cost does not exceed \$50,000, and/or
  - ii. the Professional Service required is exempt, under the *Public Purchasing Act* of the Province of New Brunswick, or other applicable trade agreement(s), from the requirements of competitive bidding.
- d) Materials Management shall issue a Request for Proposal in the same manner as for a Request for Tender as set out in Section 5.6, excluding the requirement for a public opening, if the estimated value is greater than \$25,000 for Goods, \$50,000 for Services or \$100,000 for Construction.
- e) Where the requirement is not straightforward or an excessive workload would be required to evaluate proposals, either due to their complexity, length, number or any combination thereof, a multi-step procedure may be used that would include a pre-qualification stage.
- f) A Selection Committee, composed of a minimum of two representatives from the Division and a representative from Materials Management, shall review all proposals against the established criteria and reach consensus on the final rating results and ensure that the final rating results with supporting documents are kept in the procurement file.
- g) Materials Management shall forward to the Division Manager a summary of the procurement and the recommendation of the Selection Committee for Award of Contract to the Supplier meeting all mandatory requirements and providing Best Value as stipulated in the Request for Proposal.
- h) The City Manager may Award a Contract of \$75,000 or less for Goods, Services or Construction, emanating from a Request for Proposal provided that:
  - i. sufficient funds are available and identified in appropriate accounts within Budget(s) including authorized revisions,
  - ii. the Award is made to the Supplier meeting all mandatory requirements and providing Best Value as stipulated in the Request for Proposal,
  - iii. Materials Management is in receipt of an approved requisition, and
  - iv. the provisions of this Policy are followed.
- i) Where the discretion referred to in paragraph h) is exercised, written notification respecting the Award of the Contract is to be kept in the procurement file.
- j) Awards emanating from a Request for Proposal which are valued at more than \$75,000 for Goods, Services or Construction require Council approval.
- k) The Division Manager shall comply with the provisions of Section 3.5 "Contractual Agreement" of the Procurement Procedures regarding the Award of Contract.

- l) Proposals must be delivered in sealed envelopes to the Purchasing Agent, 2nd floor, Municipal Operations Complex, 175 Rothesay Ave., no later than the date and time specified in the proposal call. **Late proposals or proposals submitted by fax, electronically or by any other means will be rejected.**
- m) Immediately following the specified closing time, proposals will be publicly opened in the office of the Purchasing Agent. Only the names and addresses of proponents will be made public at that time.
- n) Proposals will be referred to the selection committee for review. The selection committee reserves the right to short-list the proponents and to request an additional verbal presentation from each short listed proponent. The names and contact information of the selection committee members shall not be made public. There will be no direct contact between the proponents and individual committee members, and unless expressly stated otherwise, all correspondence with the selection committee will be addressed to Materials Management.
- o) Unless otherwise expressly stated in the Proposal Call, the evaluation of proposals shall be based on the following criteria:
  - (i) Quality and Completeness:
    - Has the proponent addressed all of the needs identified? Is the proposal presented in an organized and professional manner?
  - (ii) Vendors Experience:
    - Has the proponent demonstrated a level of expertise with the requirements of this project? (References for projects of a similar nature.)
  - (iii) Experience of Employees/Sub-Contractors:
    - Has the proponent demonstrated a level of expertise for the employees of the company and any sub-trades listed? (Resumes for staff and any sub-trades required.)
  - (iv) Methodology:
    - Does the approach to the work, outlined in the proponent's proposal, address, in a realistic sense, attainable goals and is it in keeping with the City's' expectations for the project?

(v) Value Added:

- What additional information, technology, processes or options has the proponent included in his Proposal. Is there value added to the proponent's response for this additional information?

(vi) Cost:

- Cost will be a factor, however neither the only factor nor the determining factor, in the evaluation of *Proposals*. Proponents of Professional Services are to provide an estimated range of cost for their services.

- p) The City does not, by virtue of a Request for Proposals, commit to an Award of a project. Further, the City reserves the right not to accept the lowest cost proposal submitted. The City reserves the right to accept the Proposal deemed to be in the best interest of the City.
- q) Upon completion of the review process, a report with a recommendation on the Award of a proposal call shall be submitted by the City Manager to Common Council, for approval.
- r) Unless otherwise stated in the Request for Proposals, questions arising from a Request for Proposals shall be directed to Materials Management.
- s) Immediately following the City's acceptance of the Proposal submitted as a result of a formal Request for Proposal, Materials Management shall send a written notification of award to all unsuccessful proponents disclosing the name of the successful proponent and providing a brief explanation rationalizing the City's selection:
- i. For all Requests for Proposals valued at Fifty Thousand Dollars (\$50,000.00) or less, the written notification of award will be the only form of debriefing offered by the City;
  - ii. In the case of Requests for Proposals valued in excess of Fifty Thousand Dollars (\$50,000.00), Materials Management may, in addition to the notification of award and upon written request from any proponent, provide a more detailed oral debriefing either by phone or in person, as required by the proponent. During this debriefing, Materials Management may disclose information such as the total price of the successful proponent and may discuss

an overview of the process as well as the strengths and weaknesses of the requesting proponent's proposal.

- iii. The written request referred to paragraph (ii) shall be submitted to the Office of the Purchasing Agent no later than fifteen (15) business days after the notification of award is issued.
- iv. The acceptance of the successful Proposal shall not be discussed during a debriefing.

## **5.8 Professional Services**

### a) General

Notwithstanding the noted exemptions in the New Brunswick *Public Purchasing Act*, the engagement of Professional Services, including but not limited to, accountants, auditors, architects, engineers, surveyors, designers, planners, programmers and trainers, will be undertaken in a fair, open, and equitable fashion utilizing the method outlined in this section.

The procedures for the engagement of Professional Services recognize that the level of expertise and effort is dictated by the scope and complexity of the requirement. These considerations determine the relative cost to complete the requirement.

For the purpose of this policy, it is estimated that the cost of Professional Services shall be in the range of approximately 15% to 20% of the total estimated project cost. For example, if a project is estimated to cost \$100,000.00 to complete, it will be assumed that the cost of related Professional Services may be up to \$20,000.

### b) Methods of Vendor Selection and Approval Authority

The following standard is in accordance with the estimated cost of Professional Services:

	<b>Est. Cost</b>	<b>Process</b>	<b>Approval Level</b>
1	Up to \$15,000	Based on ability and experience	Division Manager
2	\$15,000-25,000	Based on ability and experience	Department Head
3	\$25,000–50,000	Written Submissions by Invited Bids (Minimum of 3	City Manager



		where possible)	
4	\$50,000-\$75,000	Advertised Public Call for Proposals	City Manager
5	\$75,000 and up	Advertised Public Call for Proposals	Council

c) Professional Services with a value up to \$15,000

The engagement of Professional Services with an estimated value up to \$15,000.00 shall be at the discretion of the Division Manager responsible for the project and the budget. Competitive Bids are not required; however, it is the responsibility of the Division Manager to ensure that all vendors are treated fairly and equitably.

Upon selection of the vendor, it is the responsibility of the Division Manager to meet with the service provider to review the requirements of their engagement and to obtain a written estimate of the fees to be charged. This estimate shall be forwarded to Materials Management with an approved requisition.

Service providers will be selected on the basis of their ability to provide the specific Professional Services required.

d) Professional Services with a value of \$25,000 or less

The purchase of Professional Services valued at \$25,000.00 or less shall be at the discretion of the Department Head responsible for the project and the associated budget. Before purchasing Professional Services valued at \$25,000.00 or less, the Department Head shall ascertain the total cost of the project to ensure that the said Professional Services are not in fact valued at no more than \$25,000.00 and therefore within the Department Head's spending authority.

The Department Head shall also ensure that all potential vendors are treated fairly and equitably.

Upon selection of the service provider, it is the responsibility of the Department Head to meet with the said service provider to review the requirements of their engagement and to obtain a written estimate of the fees to be charged. This estimate shall be forwarded to Materials Management with an approved requisition.

Service providers will be selected on the basis of their ability to provide the specific Professional Services required.

e) Professional Services with a value of \$50,000 or less

The engagement of Professional Services with a value of \$50,000 or less shall be at the discretion of the City Manager.

User departments shall obtain, where possible and practicable, three written estimates of cost based on the total value of the project and the scope of the work. Staff shall ensure that those who have an expertise in the specific discipline required are afforded an opportunity to submit cost estimates.

Once approved by the City Manager, copies of the estimates are to be forwarded to Materials Management with an approved requisition.

f) Professional Services with an estimate value greater than \$50,000

The engagement of Professional Services with an estimated value greater than \$50,000, but less than \$75,000, shall require the approval of the City Manager. Common Council approval is required for all expenditures of more than \$75,000.

Users will coordinate their requirements through Materials Management, who will employ the “Request for Proposal - RFP” method detailed in Section 5.7.

g) Insurance

Notwithstanding the estimated cost or the procurement method employed, in each and every instance where the services of a professional are engaged, it is mandatory to ensure that the individual or firm retained has current and sufficient liability insurance coverage.

Proof of coverage is required prior to any formal engagement of services.

Details of type and minimum requirements of insurance coverage may vary depending on the project. This information is available from the City’s Insurance and Claims Officer.

## **5.9 Legal Services**

The procurement of legal services is exempt from a competitive process and from the use of a purchase order, if made in accordance with the delegation of authority to the City Solicitor.

The City Solicitor shall annually report to Council on the use of external legal services.

### **5.10 Standing Offer Purchases – (Supply Agreements)**

- a) A Request for Standing Offer may be used where:
  - i. one or more departments/divisions repetitively order the same Goods or Services and the actual demand is not known in advance, or
  - ii. a need is anticipated for a range of Goods or Services for a specific purpose, but the actual demand is not known at the outset, and delivery is to be made on a “when required” basis.
- b) Materials Management is authorized to establish and maintain Standing Offers that define Goods and/Services to be provided by selected suppliers for a fixed term and at a fixed cost and within the spending limits defined by this policy.
- c) To establish prices and select sources, Materials Management shall follow the provisions for Requests for Quotations, Requests for Proposals and Requests for Tenders contained in this policy for the acquisition of Goods and Services.
- d) More than one Supplier may be selected where it is in the best interests of the City and the Bid Solicitation allows for an award to more than one Supplier.
  - i. In circumstances where competition results in a large number of identical offers from different vendors, Materials Management may use the factors identified at section 3.3 "Equal Bids" of the Procurement Procedures to break a tie.
- e) Where purchasing is initiated by a Division for frequently used Goods or Services for which a Standing Offer is in place, the Division must make every effort to make the purchase with the Supplier(s) listed in the Standing Offer.
- f) In a Request for Standing Offer, the expected quantity of the specified Goods or Services to be purchased over the time period of the agreement will be as accurate an estimate as practical and be based, to the extent possible, on previous usage adjusted for any known factors that may change usage.
- g) No contract exists between the Supplier and the City until the City places a Purchase Order against the Standing Offer.
- h) A call-up, in the form of a Purchase Order, against a Standing Offer is considered to be an individual Contract, and the approval authority for a Contract Award is as prescribed at section 4.1. Where it is anticipated, based on historical data, that an individual call-up from a Standing Offer will exceed the City Manager’s approval

level (\$75,000 or less), the Award of the Standing Offer must have the approval of Council.

- i) In keeping with subsection h), the Commissioner of Finance, or his designate, acting on behalf of Council, may approve a call-up against a Standing Offer, equal to the maximum approved by Council, provided that the purchase is properly authorized by the Division Manager, is consistent with the intent, terms, specifications and conditions of the Standing Offer and all the requirements of this policy are complied with.

### **5.11 Non-Competitive Purchases – Sole Source**

- a) The requirement for competitive Bid Solicitation for Goods, Services and Construction may be waived under the authority of the City Manager or Common Council and replaced with negotiations by the Division Manager and Materials Management under the following circumstances:
  - i. where competition is precluded due to the application of a piece of legislation or because of the existence of patent rights, copyrights, technical secrets or controls of raw material,
  - ii. where a Special Circumstance exists,
  - iii. where the possibility of a Follow-on Contract was identified in the original Bid Solicitation,
  - iv. in any of the circumstances listed as exemptions to competitive public purchasing in Regulation 94-157 under the *Public Purchasing Act*.
- b) When a Division Manager intends to select a Supplier to provide Goods, Services or Construction pursuant to paragraph a), said Division Manager shall advise Materials Management in writing of the compelling rationale that warrants a non-competitive selection and obtain Materials Management approval.
- c) The Supplier in whom the Division Manager and Materials Management have the greatest confidence to fulfill the requirement and who provides for Fair Market Value shall be recommended to the City Manager and/or Council for Contract Award.
- d) The City Manager may Award a Contract emanating from negotiations, including that for which no competitive bids were solicited, provided that:
  - i. the funds are available in appropriate accounts within the Council approved Budgets, including authorized revisions to meet the proposed expenditure,
  - ii. the amount of the Contract does not exceed \$75,000.

- iii. the Division Manager and Materials Management are both satisfied that the Contract represents Fair Market Value.
- e) Non-competitive Awards valued at more than \$75,000 require the approval of Common Council.
- f) The Division Manager shall comply with the provisions of Section 3.5 "Contractual Agreement" of the Procurement Procedures regarding the use of an agreement or Purchase Order for non-competitive purchases.

### **5.12 Special Circumstance (Emergency) Purchases**

- a) When a Department Head is of the opinion that a "Special Circumstance" which warrants a non-competitive purchase exists, the Department Head may authorize the purchase of such Goods, Services and Construction as is considered necessary to remedy the situation without regard to the requirement for a Bid Solicitation and may Award the necessary Contract provided that the Contract does not exceed \$25,000.
- b) Where the extent or the severity of the "*Special Circumstance*" which warrants a sole source purchase is such that the expenditure is likely to be in excess of \$25,000 but less than \$75,001, the City Manager, Chief City Engineer or Commissioner of Finance may Award the necessary Contracts for the purchase of such Goods, Services and Construction as is considered necessary 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 Budget(s).
- c) Where the extent or the severity of the "*Special Circumstance*" which warrants a sole source purchase is such that the expenditure is likely to be more than \$75,000, and circumstances allow, Common Council may Award the necessary Contracts for the purchase of such Goods, Services and Construction as is considered necessary without regard to the requirement for a Bid Solicitation provided that Common Council is satisfied that adequate funds may be appropriated from accounts within the Budget(s).
- d) Notwithstanding paragraphs b) and c), should the nature of the "Special Circumstances" be such that the health, welfare or safety of the public is in jeopardy, the Department Manager shall undertake whatever steps are necessary to correct an emergency situation expeditiously.
- e) The relevant details surrounding the application of paragraphs a), b) or d) shall be included in a report which shall be submitted to Council at the earliest possible opportunity, following the Special Circumstance.

### **5.13 Follow-On Non-Competitive Contracts for Professional Services**

- a) Where a reasonable likelihood exists that, on completion of a Contract, it will be necessary to Award a non-competitive Contract for additional, related Professional Services, the Division Manager shall ensure that the possibility of a Follow-on Contract will be identified in the original Bid Solicitation and Contract Award.
- b) Fees for any Follow on Contract shall be based on the same unit or per diem rates as are contained in the original Contract or Bid, and Materials Management shall draft all Request for Proposals for Professional Services accordingly.

### **5.14 Unsolicited Proposals**

- a) Unsolicited Proposals received by the City shall be reviewed by the Division Manager and Materials Management.
- b) Any procurement activity resulting from the receipt of an Unsolicited Proposal shall comply with the provisions of this policy.
- c) A Contract resulting from an Unsolicited Proposal shall be awarded on a non-competitive basis only when the procurement complies with the requirements of a Non-Competitive Purchase, as defined at section 5.11.

### **5.15 Contract Without Budgetary Appropriation**

Where a requirement exists to initiate a project for which Goods, Services or Construction are required and funds are not contained in appropriate accounts within the Council approved Budget(s) to meet the proposed expenditure, the Division Manager shall, prior to the commencement of the purchasing process, submit a report, through the City Manager, to Council containing:

- information surrounding the requirement to contract,
- the terms of reference to be provided in the Contract, and
- information on the availability of the funds within existing Budget(s), which were originally approved by Council for other purposes or on the requirement for additional funds.

## **6.0 CO-OPERATIVE PURCHASING**

- a) Materials Management may participate with other government agencies or public authorities in Co-operative Purchasing, or exercise the City's right to call-up Goods or Services, in accordance with the spending limits established in this policy, from existing Standing Offers established by the Province of New Brunswick, where it is in the best interests of the City to do so.
- b) The policies of the government agencies or public authorities calling the co-operative Tender are to be the accepted policy for that particular Tender so long as it complies with the requirements of the New Brunswick *Public Purchasing Act* and all applicable trade agreements.

## **7.0 SURPLUS DISPOSAL**

- a) Division Managers shall submit to Materials Management reports of furniture, vehicles, equipment, stocks of all supplies, and other Goods or materials, which are no longer used or which have become obsolete, worn out, or incapable of being used.
- b) Materials Management may transfer furniture, vehicles, equipment, surplus stock, and other Goods and materials from one Division to another.
- c) Materials Management may sell by public auction or competitive sealed Bid, all furniture, vehicles, equipment, surplus stock, supplies, or other Goods or materials which have become unsuitable for use by the City or exchange or trade for new or other similar Goods or materials.
- d) Sale of surplus furniture, vehicles, equipment, stock, supplies and other Goods or materials shall be made to the highest bidder and the sale shall be made in accordance with the provisions of the City's Procurement Policy.
- e) Surplus furniture, equipment, stock, supplies and other Goods or materials that have been determined by Materials Management to have no residual value, may, at the discretion of the Manager of Materials Management, be disposed of as garbage.
- f) At no time or under no circumstances are the surplus assets of the City to be disposed of by donation or direct sale to City employees or retirees. City employees or retirees may only obtain ownership of surplus through one of the competitive bidding methods described herein.
- g) The City Manager, at his sole discretion, and upon a recommendation from Materials Management, may set aside the requirements of 2.14 (a) to(f) so as to donate, or negotiate a direct transfer by sale, of surplus furniture, equipment, stock, supplies or Goods to another municipality or any recognized or registered charity.

**8.0 CONFLICT OF INTEREST**

The City shall not purchase Consulting Services or Professional Services from a vendor whose services were hired by a private sector developer on the same or a related project.