



Governance and Priorities Committee Report

For the Meeting of January 7, 2016

To: Governance and Priorities Committee **Date:** December 10, 2015
From: Susanne Thompson, Director of Finance
Subject: Proposed Amendments to the Expenditure Bylaw

RECOMMENDATION

That Council:

1. Direct staff to bring forward a Procurement Policy for Council's approval as outlined in this report or as amended by Council
2. Repeal the Expenditure Bylaw after approval of the Procurement Policy

EXECUTIVE SUMMARY

The goal of competitive procurement processes is to obtain the goods and services needed to achieve the objectives of the City while providing the best value for the taxpayers through open, fair and transparent access to City business.

There is no legislative requirement to have a bylaw for procurement. Best practice research across BC found that most municipalities do not have formal bylaws in place; however all have policies and practices that are tailored to each municipality's particular circumstance.

The City has had a bylaw in place for decades, through which Council sets the policy direction that guides procurement. The bylaw delegates the authority to City staff to purchase goods and services as approved by Council through the financial plan. The bylaw also outlines the types of procurement processes and the associated expenditure limits used by the City. The bylaw must be in compliance with relevant legislation and trade agreements. Should Council choose to replace the bylaw with a policy, the policy would become the guiding document.

A review of the Expenditure Bylaw is identified in the Operational Plan under the objective "Building the Financial Capacity of the Organization". This report seeks Council's direction on potential changes to the bylaw, or policy, should Council choose to implement one instead.

Staff have identified a number of areas that could be implemented to update and strengthen the bylaw or policy including sustainability guidelines, vendors' community involvement, state of emergency, single source purchases, standards of conduct, and approval limits. The recommendations in this report take into account what has worked in other municipalities as well as the specific needs for Victoria.

PURPOSE

The purpose of this report is to seek Council's direction on potential changes to the expenditure bylaw, or policy should Council choose to implement one instead.

BACKGROUND

Council sets the policy direction that guides procurement through the Expenditure Bylaw (Appendix A). The evaluation criteria used by staff to evaluate bids reflects the policy direction (see Appendix B for an example of criteria used for Requests for Proposals). There is no legislative requirement to have an expenditure bylaw, and many municipalities choose to have a policy rather than a bylaw. However, the City has had one in place for decades.

The Expenditure Bylaw was last revised in 2009. This bylaw delegates the authority to City staff to purchase goods and services as approved by City Council through the financial plan. The bylaw also outlines the various types of procurement processes and their associated approval limits used by the City.

In addition to the expenditure bylaw, the City must also adhere to relevant legislation and trade agreements. The New West Partnership Trade Agreement (NWPTA) is one of the trade agreements that the City must follow. This agreement between BC, Alberta and Saskatchewan requires open and non-discriminatory access to procurement for goods and services over \$75,000 and for construction over \$200,000. Other agreements, such as the Agreement of Internal Trade (AIT), and case law regarding procurement processes also set out the rules the City must adhere to. In particular, local supplier preference would be found inconsistent with the "non-discrimination" requirement of trade agreements. (see page 4 of Appendix C). The City's bylaw directs that "in case of identical bids", the award goes to the local vendor. The City has rarely had to use this provision since the evaluation process typically results in a clear winning bid. The City typically procures goods and services for approximately \$68 million annually. Through the processes currently in place, the majority (approximately 73%) of the City's purchasing is with local vendors (see summary in Appendix D).

A best practice review of municipalities that are part of the Metro Vancouver Municipal Purchasing Group (MVMPG) and their respective purchasing authority spending limits determined various policy limits and practices that are tailored to each community's own circumstances. A summary of policies limits are attached as Appendix E.

ISSUES & ANALYSIS

Based on the best practice review and an internal review of the existing expenditure bylaw and current City practice, a number of new sections and amendments could be implemented in either the bylaw or a policy.

Sustainability Guidelines

It is the City's practice to include sustainability guidelines into all Requests for Proposals, however these guidelines are not explicitly stated within the current bylaw. Adding them would acknowledge the City's commitment to encourage the use of environmentally-friendly and fair trade/ethical products, services and practices.

Community Involvement

The City is part of the local community and recognizes the value of community involvement. Although trade agreements do not allow local preference procurement policies, the City currently gives preference to local bidders in the case of identical bids. To strengthen the City's support for community involvement and to recognize a vendor's community involvement at the local, national or international level, evaluation criteria could be added to competitions. The community

involvement could be through philanthropic investment or corporate volunteerism.

State of Emergency

The current expenditure bylaw sets out levels of authority for expenditure sign-off, however, it does not include special authority provisions to Emergency Operations Personnel in the event of a Declaration of a State of Emergency. It would be prudent to have those limits established in advance of an emergency to ensure that the needs of the Emergency Operations Centre are met during an event.

Single Source Purchases/Notice of Intent

Currently, formal reporting to Council on single source purchases takes place every six months. This reporting is done after the fact. To be more transparent, the City could provide a "notice of intent" before a single source takes place to provide notice to the vendor community prior to proceeding with a single source. Should an alternate vendor come forward that could provide the good or service that meets the requirements, a competitive process would be initiated.

Standards of Conduct

The City currently employs ethical procurement practices, but they are not embedded in the bylaw/policy. Formally including them would acknowledge the City's commitment to ethical procurement practices.

Approval Limits

The current bylaw allows Requests for Offers up to \$30,000. This limit has not been increased in many years and based on comparisons with other municipalities staff propose to increase this limit to \$50,000.

Efficiency/Clarification Amendments

Electronic submissions: The current bylaw requires public openings of some tenders and requests for proposals and this is done through receipt of hard copy submissions of the bids. It would be more efficient to allow submissions electronically.

Access to other governmental agencies: The City currently on occasion enters into joint purchasing competitions with other municipalities to benefit from better pricing through larger scale purchases. However, the current bylaw does not provide the authority for the City to take advantage of purchasing agreements arranged by other governments such as the Province. Many municipalities take advantage of these opportunities and the City could benefit from having the ability to do so.

Exclusions: The applicable trade agreements outline some exclusions to competitive process including emergency situations and procurement from non-profits. Also, some procurement processes are guided by separate policies, such as the investment policy. It is not advisable to include the specific exclusions since those exclusions may change over time. However, it is proposed that the bylaw/policy refers to the exclusions to clarify that it does not cover some procurement processes.

Used Good and Equipment: The City does look at purchasing opportunities that provide best value for taxpayers, including used good and equipment. However, this avenue is currently not explicitly identified and it would provide better clarity if it were included.

OPTIONS & IMPACTS

Option 1: Implement a procurement policy as outlined in this report or as amended by Council and repeal the expenditure bylaw (recommended)

Impact: This provides Council an opportunity to shape the policy to ensure it remains current and relevant. Replacing the bylaw with a policy is consistent with current best practice.

Option 2: Do not amend the bylaw at this time.

Impact: Will not clarify and update the bylaw to address the areas outlined in this report.

2015 – 2018 Strategic Plan

This bylaw review is in alignment with the Strategic Plan objective "Building the Financial Capacity of the Organization".

Impacts to 2015 – 2018 Financial Plan

This bylaw guides procurement decisions for expenditures that are authorized through the Financial Plan.

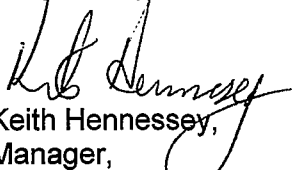
Official Community Plan Consistency Statement

Not applicable.

CONCLUSIONS

The City's Expenditure Bylaw aims to balance efficiency of procurement processes to achieve the organization's objectives, and obtaining value for taxpayer dollars. With the above recommended changes, the bylaw will be replaced with an updated policy to align with best practices. Staff will continue to monitor other municipalities to learn from their policy choices and will bring forward new information for Council's consideration.

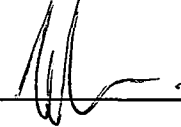
Respectfully submitted,


Keith Hennessey,
Manager,
Supply Management Services


Susanne Thompson
Director of Finance

Report accepted and recommended by the City Manager: _____

Date: _____


December 11, 2015

List of Attachments

Appendix A: Expenditure Bylaw #09-054

Appendix B: Sample Evaluation Criteria

Appendix C: Guidelines to the Procurement Obligations of Domestic and International Trade Agreements

Appendix D: Summary of City Purchases

Appendix E: Purchasing Authority Spending Limits (MVMPG)