

# REGIONAL DISTRICT OF NANAIMO PURCHASING POLICY

|                 |                          |              |         |
|-----------------|--------------------------|--------------|---------|
| SUBJECT:        | <i>Purchasing Policy</i> | POLICY NO:   | A2.22   |
|                 |                          | CROSS REF.:  |         |
| EFFECTIVE DATE: | November 10, 2020        | APPROVED BY: | Board   |
| REVISION DATE:  |                          | PAGE:        | 1 OF 15 |

## POLICY STATEMENT

The Regional District of Nanaimo is committed to ensure Goods, Services, and Construction are procured through a fair, open and transparent Competitive Procurement Process that protects the interests of taxpayers and maintains the controls necessary for a public body.

## PURPOSE

The purpose of this Policy is to establish governance parameters for the purchasing of all Goods, Services, and Construction for the RDN. This Policy is intended to:

1. promote fair, open and transparent purchasing practices;
2. ensure the RDN obtains the best value for its expenditures; and
3. establish authorization and competition requirements.

## POLICY

### 1. DEFINITIONS

Definitions for the terms included in this policy are attached as Appendix A.

### 2. RESPONSIBILITIES

2.1 The Board is responsible to:

- a) approve this Policy;
- b) approve future amendments to this Policy;

- c) approve the Financial Plan to cover the acquisition of Goods, Services, and Construction;
- d) amend the Financial Plan for certainty associated with unanticipated situations or emergencies to cover the acquisition of Goods, Services, and Construction not included in the current year's approved Financial Plan; and
- e) approve Procurements in the particular circumstances described in this Policy.

2.2 The Chief Administrative Officer is responsible to:

- a) implement this Policy;
- b) bring forward future amendments to this Policy for the Board's consideration;
- c) approve and issue administrative directive(s) as required to implement this Policy; and
- d) approve Procurements in the particular circumstances described in this Policy.

2.3 The Director of Finance is responsible to:

- a) ensure compliance with this Policy as required;
- b) approve and issue administrative procedure(s) and/or guidelines required to implement this Policy; and
- c) approve Procurements in the particular circumstances described in this Policy.

### **3. APPLICATION**

3.1 The Policy applies to all authorized personnel responsible for purchasing, approving or executing Contracts for Goods, Services, and Construction on behalf of the RDN. Nothing in this policy delegates authority to non-RDN staff to enter into Contracts for or on behalf of the RDN.

3.2 Provided the general requirements for a Competitive Procurement Process do not apply in applicable Trade Agreements, this Policy does not apply to the following:

- a) purchase and Disposition of Land;
- b) licenses, leases and/or agreements related to Land owned by the RDN;
- c) revenue contracts;

- d) recurring annual charges including, but not limited to, payment to other governmental authorities and investments;
- e) employment contracts;
- f) banking services;
- g) human resources benefits;
- h) vehicle, liability, and property insurance; and
- i) Procurement and payment of Goods, Services, and Construction for:
  - i) courses, seminars, staff training, development training, conferences, workshops;
  - ii) association fees and membership dues;
  - iii) grants to other agencies and associations;
  - iv) debt payments and equipment lease payments;
  - v) payment of damages or settlements;
  - vi) utilities (such as natural gas, hydro, water); and
  - vii) postage.

**4. PROCUREMENT CONTRACTING AUTHORITY**

4.1 The following table provides a summary of the Competitive Procurement Process for respective Procurement Values. The table is not applicable to Non-Competitive Purchases.

| <b>Procurement Value (excluding taxes)</b> | <b>Methodology to acquire Goods, Services, and Construction</b> | <b>Minimum Approval and Contract Signing Authority</b>                   | <b>Purchase Order</b> | <b>Contract Required</b> |
|--|---|--|-----------------------|--------------------------|
| \$0.00 - \$5,000.00                        | Informal Request for Quotes from one or more Vendors.           | Supervisors, Coordinators, Accountant, Chief Operator, or Chief Mechanic | No                    | No                       |

|                             |  |  |     |     |
|-----------------------------|--|--|-----|-----|
| \$5,000.01 - \$15,000.00    | Written Request for Quotes or Request for Statements of Qualifications from two or more Vendors.   | Superintendent, Advisors, Executive Assistant, or Project Engineer | Yes | No  |
| \$15,000.01 - \$25,000.00   | Written Request for Quotes or Request for Statements of Qualifications from two or more Vendors.   | Department Manager   | Yes | No  |
| \$25,000.01 - \$50,000.00   | Written Request for Quotes or Request for Statements of Qualifications by inviting at least three or more Vendors or by public advertisement | Director   | Yes | No  |
| \$50,000.01 - \$100,000.00  | Formal solicitation documents issued by public advertisement   | General Manager  | Yes | Yes |
| \$100,000.01 - \$500,000.00 | Formal solicitation documents issued by public advertisement   | CAO  | Yes | Yes |
| Over \$500,000.00           | Formal solicitation documents issued by public advertisement   | Board  | Yes | Yes |

- 4.2 Procurement evaluation criteria shall weight price at no less than 40% of the points assigned for evaluation purposes.

The CAO and General Manager may approve an alternative procurement evaluation criterion when the best value for goods, services, and construction purchases can be realized with an alternative weighting system.

- 4.3 Standard Competitive Procurement Process methods consist of a Request for Quotes, Request for Statements of Qualifications, Tenders, Request for Proposals, Request for Standing Offers or any other Competitive Procurement Process approved by the CAO that is compliant with the requirements of applicable Trade Agreements.

- 4.4 Other Procurement methods consist of, but are not limited to, the following:
- a) Expressions of Interest (“**EOI**”);
  - b) Requests for Information (“**RFI**”);
  - c) Request for Offers (“**RFO**”);
  - d) Small Items Purchasing (“**SIP**”);
  - e) Buying Groups;
  - f) Request for Prequalification (“**RFPQ**”).
- 5. Sole Source and Single Source Purchases (Non-Competitive Purchases)**
- 5.1 The RDN will use a competitive procurement process whenever possible for purchases of Goods, Services, and Construction in excess of \$5,000.
- 5.2 A Notice of Intent to Contract must be posted publicly for at least 14 calendar days for all Sole Source and Single Source purchases more than \$75,000 for Goods, Services, and Construction prior to contracting unless otherwise authorized by the CAO or the Board.
- 5.3 Sole Source and Single Source Purchase Contracting authority levels:
- a) Department Managers over \$5,000 up to \$25,000 with approval of the Director/General Manager;
  - b) Directors/General Managers over \$25,000 up to \$75,000;
  - c) Chief Administrative Officer over \$75,000 up to \$500,000; and
  - d) Board over \$500,000.
- 5.4 A Non-Competitive Purchase may be conducted for the Procurement of Goods, Services, and Construction where there may be more than one available and capable Vendor. A Non-Competitive Purchase shall not be pursued for the purposes of avoiding a Competitive Procurement Process or to discriminate against Vendors. Failure to plan and allow sufficient time for a Competitive Procurement Process does not constitute an unforeseeable situation of urgency. The circumstances where Non-Competitive Purchases are allowed are as follows:
- a) as allowed by applicable Trade Agreements; and
  - b) the CAO and/or any respective General Manager is authorized to approve expenditures in Emergency situations; or

- c) shared service and partnership agreements; or
- d) the absence of a receipt of any bids in response to a call for bid in accordance with this Policy; or
- e) where the RDN has a lease or rental Contract with a purchase option and such purchase option could be beneficial to the RDN; or
- f) where the work is a continuation or updating of work previously assigned to the same provider with specific background with the project within 2 years of completing the initial project unless otherwise authorized by the CAO; or
- g) where there is an operational requirement requiring compatibility, standardization and uniformity or warranty coverage with existing equipment and in order to satisfy this requirement, the Goods or Services must be procured from a specific Vendor (e.g. servicing by a specific Vendor required for warranty purposes; same machinery required for operational purposes); or
- h) the purchase of used goods, vehicles and equipment or items at auction; or
- i) in the absence of any challenges in response to a Notice of Intent to Contract; or
- j) Goods and Services purchases for testing or trial use; or
- k) a highly specialized technical expert is required; or
- l) the Contract is within the authority of the Chief Administrative Officer, who has determined a Competitive Procurement Process would not be practical and is not required; or
- m) the Goods or Services are proprietary to a Vendor; or
- n) where there is only one available source usually due to a patent or copyright of the technology required, technological compatibility with existing equipment or uniqueness of the Services provided; or
- o) where there is only one authorized distributor, reseller or provider for the geographical area; or
- p) where only one known source exists as determined by documented research; or
- q) where no other reasonable alternative exists that meets the requirements.

## **6. Change Orders**

6.1 Change Orders may be approved as follows:

- a) Project Manager: up to \$50,000 per Change Order within the Board approved project budget, cumulative value of the Change Order(s) not to exceed 10% of the original Contract Price of the Contract;
  - b) General Manager: up to \$100,000 per Change Order within the Board approved project budget, cumulative value of the Change Order(s) not to exceed 20% of the original Contract Price of the Contract;
  - c) Chief Administrative Officer: up to any value within the Board approved project budget;
  - d) Board: Any Change Orders exceeding the authority of the CAO.
- 6.2 The initial awarded amount of the Contract, excluding taxes, shall be the basis of all Change Orders.
- 6.3 When calculating the Price of Change Orders, the Price includes the Prices of all Change Orders issued under the relevant Contract.

## **7. Prohibitions**

- 7.1 The following activities are prohibited under this Policy:
- a) the dividing of Contracts or purchases to avoid the requirements or thresholds of this Policy; and
  - b) committing the RDN to Contract without the appropriate level of authority to do so.
- 7.2 No Contract shall be entered into, and no expenditure shall be authorized or incurred unless the Board has provided funds for such purpose in the annual Financial Plan or otherwise agreed to the provision of such funds and, no expenditure shall be authorized or incurred for more than the funds provided. The CAO and/or respective General Manager is authorized to approve expenditures outside of the Financial Plan in only Emergency situations as authorized by Section 401 of the *Local Government Act* and must report on these expenditures at the next regular Board meeting.

## **8. Surplus Disposal (Except Land and Improvements)**

- 8.1 The Director of Finance shall have authority to Dispose of any vehicles, equipment, furniture, materials, or supplies no longer required by the RDN.
- 8.2 The methods of Disposal shall be by whatever method is determined to be most beneficial for the RDN and appropriate for the Goods to be Disposed.

8.3 No officer or employee of the RDN shall be permitted to purchase any personal or real property which has been declared surplus by the RDN unless obtained through a public process.

8.4 All tangible capital asset disposals must be reported by the Manager to the Director of Finance.

## 9. Vendor Management

9.1 Department Heads/Project Managers will be responsible to document Vendor performance. In the event of poor performance, the Department Heads/Project Managers will develop a vendor performance corrective action plan to bring performance back to an acceptable level. If acceptable performance is not restored, the Chief Administrative Officer may take appropriate action to reduce risk to the RDN.

9.2 The RDN may, in its absolute discretion, exclude a Vendor from participating in a Procurement process or reject the submission of a Vendor if:

- a) the Vendor or any of its officers or directors has been engaged, or is currently engaged, directly or indirectly, in a legal action against the RDN, its elected officials, officers or employees in relation to:
  - i) any other Procurement process;
  - ii) any other contract for Goods and Services; or,
  - iii) any matter arising from the RDN's exercise of its powers, duties, or functions under the *Local Government Act*, the *Community Charter*, or another enactment, within two years of the date of the Procurement in question;
  - iv) In determining whether to reject a tender under this clause, the RDN will consider whether the litigation is likely to affect the Tenderer's ability to work with the RDN, its consultants and representatives and whether the RDN's experience with the Tenderer indicates that the RDN is likely to incur increased staff and legal costs in the administration of this contract if it is awarded to the Tenderer.
- b) the Vendor has failed to declare a potential conflict of interest when responding to a Procurement request; or
- c) if there is supporting evidence, the RDN may exclude a Vendor on grounds such as:
  - i) bankruptcy, or imminent bankruptcy;



- ii) false declarations;
- iii) documented significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
- iv) final judgments in respect of serious crimes or other serious offences;
- v) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Vendor;
- vi) violations of health and safety laws; or
- vii) demonstrated abusive or threatening behavior towards RDN staff.

9.3 In arriving at a determination to exclude a Respondent or Vendor pursuant to this section, the RDN will consider whether the circumstances are likely to affect the Respondent or Vendor's ability to work with the RDN, its consultants and representatives, and whether the RDN's experience with the Respondent or Vendor indicates that the RDN is likely to incur increased staff time and/or legal costs in the administration of any dealings with the Respondent or Vendor.

9.4 Based on the severity of the events leading to the exclusion, the RDN shall establish the duration of the period during which the exclusion shall be effective.

9.5 Should the RDN proceed to exclude a Vendor, the RDN will provide the Vendor with written notice of its intention to exclude, the length of time of the exclusion, a summary of the proposed grounds for the exclusion, and the reasons for the exclusion. Vendors will be provided prior notice and an opportunity to respond before the RDN makes its initial decision. If the initial decision is to exclude the Vendor, the Vendor will have the opportunity to appeal the decision for reconsideration to the Director of Finance. Once the matter has been reconsidered, the RDN's decision will be final.

9.6 A Respondent may file a protest with the RDN concerning any aspect of the Procurement process that relates to a designated Contract and request that the RDN conduct an inquiry into the complaint. The RDN will only decide to investigate a complaint once it is properly documented.

9.7 The Respondent files its protest with the Director of Finance. The Respondent's filing should include:

- a) the name, address and other contact information of the Respondent.
- b) identification of the contract or bid solicitation being protested.
- c) detailed and factual statement of the grounds for Protest.

- d) supporting documentation.
  - e) desired relief, action or ruling.
- 9.8 The Director of Finance will endeavor to respond to the Respondent within 10 business days of receiving the protest notice. If a resolution cannot be achieved, the Respondent may appeal to the Chief Administration Officer who will endeavor to respond within 10 business days. If resolution cannot be achieved, the Respondent may appeal to Board of the RDN.
- 9.9 There are three basic types of protests, pursuant to this Policy:
- a) Pre-bid Solicitation – Protest is received *prior to the bid opening or proposal due date*. Pre-bid protests are those based on the content of the initial solicitation published by the RDN requesting bids from Respondents or other interested parties.
  - b) Pre-award – Protest *following recommendation for award* and is received after receipt of bids or proposals, but prior to award of a contract.
  - c) Post-award – Protest received within 30 calendar days from date of *contract award notification*. A post-award generally alleges a violation of applicable federal or provincial law, trade agreements and/or RDN policy or procedures relative to the seeking, evaluating, and/or awarding of the Contract.

## **10. Social and Sustainable Procurement**

- 10.1 Recognizing its role as a major purchaser of goods and services, the RDN will consider the social, environmental and economic value of the goods and services being purchased with the intent to shift spending away from goods and services that negatively impact the environment and society towards goods and services that are more sustainable, ethically sourced and socially beneficial to advance the RDN's progress to achieving and maintaining a healthy, resilient, and sustainable region;
- 10.2 At the project planning stage and based on the Board's established priorities, social and community benefit opportunities should be identified, evaluated, and included in the project planning process wherever feasible. If social and community benefit clauses are included in a project, the Competitive Procurement Process evaluation criteria should include a percentage assigned to social and community benefit and such a clause should form part of resultant obligations within the final contract language.
- 10.3 The RDN will endeavor to implement environmental sustainability considerations for construction projects, vehicles and purchase products that are third party certified such as Greenseal, FSC, SFI, Eco Logo or Energy Star.

**11. Other**

- 11.1 Best value for purchases of Goods, Services, and Construction will be determined based on the evaluation criteria set out in the applicable solicitation documents. In the absence of evaluation criteria, the lowest Priced compliant submission will prevail.
- 11.2 The RDN may, on occasion, contract for the development of specifications to be used for the Procurement of Goods, Services, and Construction. In that case, the firm or individual that is contracted to develop the specifications will not be eligible to participate in the Procurement process that utilizes the specifications for the purposes of soliciting bids unless prior approval has been obtained by the CAO or the Board.
- 11.3 All Vendors providing General Services or Construction-related Services on RDN property will be required to provide insurance in amounts as specified in the contract documents with the RDN named as additional insured on the insurance certificate.
- 11.4 All Vendors with employees conducting business on RDN property, other than low risk activities, must possess current WorkSafe BC coverage showing the firm is a member in good standing and remittance is up to date. Self-employed proprietors or partners in a partnership without employees, must have Personal Optional Protection coverage through WorkSafe BC.
- 11.5 The RDN, in its absolute discretion, may require Vendors to provide Security in the form, type and amounts specified in the solicitation documents and the resulting contract for the acquisition of Goods, Services, and Construction.
- 11.6 Unsolicited Proposals received by the RDN and supported by a Manager are to be reviewed by the department General Manager and Director of Finance or designates. If the unsolicited proposal satisfies the requirements for a Non-Competitive Purchase, the RDN may enter into a Contract with the Vendor; however, the RDN reserves the right to issue a solicitation document for the requirement.

**APPENDIX A****DEFINITIONS**

In this Policy:

- 1) **Board** - means, in relation to the RDN, the board of directors for the RDN.
- 2) **Buying Group** – means an association of members who use their combined purchasing power to achieve administrative efficiencies and where savings may accrue. Buying Groups may involve a variety of entities, including public sector, private sector, and not-for-profit organizations.
- 3) **Change Order** - means a material change to a Contract with respect to scope, Price, schedule, the specifications for the Goods, Services, or Construction or some other material change to the Contract.
- 4) **Chief Administrative Officer or CAO** - means the Chief Administrative Officer of the RDN who is appointed or assigned that responsibility under the *Local Government Act*.
- 5) **Competitive Procurement Process** – means an open, transparent, and competitive process whereby the RDN procures Goods, Services, or Construction for the RDN.
- 6) **Construction** - means a construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, the supply of products and materials, 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 civil engineering or architectural work, but does not include professional consulting Services related to the construction contract unless they are included in the Procurement or separately pre-purchased Goods.
- 7) **Contract** - means a legally enforceable agreement between two or more parties.
- 8) **Contract Amendment** - means any change to a term, condition, or other Contract provision, including a Change Order.
- 9) **Department Manager** - means the manager of an RDN department who is the primary user or coordinator of the Goods, Services, or Construction to be procured.
- 10) **Director** - means the Directors of Finance and Water and Wastewater Services.
- 11) **Director of Finance** - means the RDN officer appointed or assigned that responsibility under the *Local Government Act*.

- 12) **Dispose or Disposition** - means to transfer by any method including assign, give, sell, grant, charge, convey, lease, divest, dedicate, release, exchange, alienate or agree to do any of those things.
- 13) **Emergency** - means a sudden, unexpected, or impending situation that may cause injury, loss of life, damage to property, and/or interference with the normal activities of the RDN and which, therefore, requires immediate attention and remedial action.
- 14) **EOI** - means the process of seeking an indication of interest from potential Vendors who can undertake specific work.
- 15) **General Manager** - means the General Managers of Regional and Community Utilities, Corporate Services, Transportation and Emergency Services, Strategic and Community Development, and Recreation and Parks Services.
- 16) **Goods** - means moveable property and includes raw materials, products, vehicles, equipment, and other physical objects of every kind that are supplied to the RDN under a Contract with an outside Vendor.
- 17) **Guidelines** - means those Procurement practice guidelines issued by a Department Manager specific to their department.
- 18) **ITT** – means an Invitation to Tender consisting of a formal process to solicit competitive bids valued over \$50,000 when specifications, performance standards and timeframes are defined.
- 19) **Land** – means real property and any buildings, fixtures or structures or ancillary improvements thereon.
- 20) **Multi-Phase Contract** - means where Services are provided in phases, with progression (if any) from the initial to further phases being determined by project requirements.
- 21) **Price** – means the price to be paid by the RDN under a Contract, before applicable taxes.
- 22) **Procurement** - means the acquisition by any means, including by purchase, rental, lease, or conditional sale, of Goods, Services, or Construction.
- 23) **Procurement Value** - means the estimated total Price for the supply of Goods, Services or Construction, including any renewal options, before taxes. The Procurement Value for Multi-Phase Contracts is the anticipated total Price over all phases before taxes.
- 24) **Project Manager** - means an RDN employee who, on behalf of their department, is overseeing the Procurement and general management of the Goods or Services being procured.

- 25) **RDN** - means the Regional District of Nanaimo.
- 26) **RFI** – means Request for Information which is a market research tool that asks for information to get an idea of the number and type of Vendors and the range of solutions, technologies and products or Services they can provide.
- 27) **RFO** – means Request for Offers a formal process for Procurements whereby Vendors are encouraged to submit multiple offers in response to general specifications and/or a scope of Services.
- 28) **RFP** – means a Request for Proposals consisting of a formal process to solicit competitive proposals over \$50,000 allowing the Vendor to propose a solution to meet the intended outcomes identified in the RFP. The successful Vendor is evaluated and selected on the best overall value, not solely on Price.
- 29) **RFPQ** – means Request for Prequalification which is a vendor evaluation and shortlisting process where vendors demonstrate they have the expertise and resources to complete the work.
- 30) **RFQ** – means a Request for Quotes consisting of an informal process to solicit quotes valued at \$50,000 or less where formal tender documents are not required.
- 31) **RFSO** – means a Request for Standing Offers consisting of a formal process for Procurements valued at more than \$50,000 whereby offers are solicited from potential Vendors to provide Goods and/or Services at pre-arranged Prices, under set terms and conditions, when and if required. It is not a Contract until a “call-up” is issued against the standing offer.
- 32) **RFSQ** – means a Request for Statements of Qualifications consisting of a formal process for Procurements and is used to select the best qualified Vendor for a specific project where the scope of the Goods, Services, or Construction is not fully defined or understood. Price and work scope are negotiated with the highest evaluated Vendor based on their qualifications and experience.
- 33) **Respondent** means a potential Vendor that responds to a Procurement conducted by the RDN.
- 34) **Security** - means surety bonds, irrevocable letters of credit or any other financial instrument which provides financial guarantees that a contractor will fulfill its obligations under an agreement.
- 35) **Services** - means all services provided to the RDN under Contract by an outside Vendor, including professional, consulting, recreation and maintenance and software services.

- 36) **SIP** – means small Items purchases that do not exceed an annual value of \$5,000 (before taxes). These purchases do not require a purchase order.
- 37) **Sole Source and Single Source Purchases (Non-Competitive Purchase)** – means a process of selecting a Vendor for Goods, Services, or Construction in which the Competitive Procurement Process is not followed.
- 38) **Trade Agreements** – means the *New West Trade Partnership Agreement (NWPTA)*, *Canadian Free Trade Agreement (CFTA)*, *Comprehensive Economic and Trade Agreement (CETA)*, or any other applicable trade agreement, as amended from time to time.
- 39) **Vendor** - means a company or person that supplies or provides Goods, Services, or Construction in the context of a Procurement covered by this policy. A subcontractor does not qualify as a Vendor.