

HALIFAX

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Item No. 03


Committee of the Whole
February 07, 2017

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY:

Original Signed by 

Jacques Dubé, Chief Administrative Officer

Original Signed by 

Jane Fraser, Acting Deputy Chief Administrative Officer

DATE: December 13, 2016

SUBJECT: Administrative Order 2016-005-ADM - Procurement Policy

SUPPLEMENTARY REPORT

ORIGIN

Council direction of May 13, 2013 to review the Procurement Policy to ensure that HRM is advancing the award of projects and payments in a timely and appropriate manner.

The recommendation of the April 2014 Auditor General review of the Washmill Court Extension Project to make certain changes to HRM's procurement policy and practices.

The receipt of input from the Audit and Finance Committee regarding the originally proposed Procurement Policy changes.

LEGISLATIVE AUTHORITY

Under the HRM Charter, Section 79, Halifax Regional Council may expend money for municipal purposes.

The Nova Scotia Public Procurement Act requires proof that public sector entities have adopted or adapted their procurement policies and practices so as to conform to the Act, and requires public sector entity procurement employees to ensure their procurement activities are conducted according to policies, provincial and federal legislation, trade agreements and ethical business practices.

RECOMMENDATION ON PAGE 2

RECOMMENDATION

It is recommended that Committee of the Whole recommend to Regional Council:

1. The repeal of Administrative Order #35 Procurement Policy; and
2. The adoption of Administrative Order #2016-005-ADM - Procurement Policy as outlined in Appendix A.

BACKGROUND

On May 13, 2013, in response to a recommendation of the Executive Standing Committee, Council requested that the CAO conduct a review of the Procurement and Payment related Policies, specifically Administrative Order 35, to ensure that HRM is advancing the award of projects and payments in a timely and appropriate manner.

The April 2014 Auditor General Review of the Washmill Court Extension Project suggested that the Procurement Policy could be clearer as it relates to certain delegated authorities, including the ability to approve contract amendments and increases.

On behalf of the CAO, Procurement undertook a review and consulted with high volume internal stakeholders (including ICT, Operations Support, Transportation and Public Works, and Parks and Recreation), as well as informal discussions with external stakeholders, including Consulting Engineers of Nova Scotia (CENS) and the Construction Association of Nova Scotia (CANS), regarding issues they had identified with HRM's current policy specifically related to award delays and extensive red tape, both of which have been addressed as part of proposed changes. Staff met with CANS, CENS and Nova Scotia Road Builders Association they have had the opportunity to review the proposed changes and have indicated their support of same.

Based on the internal and external consultation, Procurement identified key opportunities for process improvement as follows:

- Improved and shortened award recommendation processes
- Adding marketplace clarity via consistency with other levels of Government who are tendering within the Municipality
- Recognition that Council has approved most Capital Projects through the Budget Process
- The need for defined standards for each process and point of approval

In order to better address these goals a jurisdictional scan was performed which included not only a review of the Policies of similarly sized jurisdictions within Canada, but reviews of the current draft Province of Nova Scotia Procurement Policy (implemented October 1, 2016), the Nova Scotia Procurement Protocols, the Nova Scotia Sustainable Procurement Policy, the Public Procurement Act, the Atlantic Procurement Agreement (APA), and the Agreement on Internal Trade (IAT).

In addition to the circulation of the draft policy internally, the final draft was reviewed and is supported by the Chief Procurement Office/Internal Services Department of the Province of Nova Scotia.

DISCUSSION

The current Administrative Order #35 Procurement Policy is consistent with the requirements of the Nova Scotia Public Procurement Act and many Procurement best practices, but in light of the concerns of

Council, the Auditor General, and internal and external stakeholders, revisions are required to allow for timely and appropriate contract awards, clarity in relation to authorities and approved processes, improved customer service, reduced red tape, and greater accountability for HRM.

In order to enact a proposed policy using the Municipality's current Policy standards, the current Administrative Order 35 must be repealed and replaced.

Key improvements found in the proposed Policy include:

- **Interpretation:** Provides a clearer description of "Agent", confirms their need to comply with the Nova Scotia Public Procurement Act and the terms of the Agent's written contract with HRM when making purchases on behalf of the Municipality. Chiefs of Police and Fire, DCAO and the CEO of Halifax Public Libraries have been included under the term "Director" for the purposes of this policy
- **Responsibilities:** Reflecting the recommendations of the AG report, the new policy more clearly speaks to the responsibilities of the Business Unit versus the responsibilities of the Procurement Section, clarifying roles.
- **Purchasing Processes:** Introduces the ability for Business Units to purchase under \$10,000 independent from the Procurement Section (currently \$1,000), and the ability of the Director to delegate up to \$100,000 of their authority for requesting goods and services (currently \$50,000). The new provisions are more consistent with the Provincial policy.
- **Posting:** Aligns the posting of Halifax Regional Municipality contract awards with the requirements of the Nova Scotia Public Procurement Act and the Atlantic Procurement Agreement.
- **Openings:** The proposed Policy allows the Procurement Manager to decide whether public openings are held on a case by case basis. This enables non-binding procurement processes, such as negotiable RFPs, as a risk mitigation tool. Additionally, this aligns the Municipality's practices with the Province of Nova Scotia in an effort to provide marketplace consistency.
- **Standard Methods:** In addition to providing more clarity, these sections define the authority to approve Standing Offers and make draws from Standing Offers. The current Policy is silent on these authorities and is described in a separate direction from the CAO. The proposed Policy introduces non-binding or "negotiable" RFPs, allowing for non-binding processes which can include negotiation with proponents within a formal framework when it is deemed appropriate.
- **Alternative Methods:** Redefines Sole Source purchases by adding the ability for the Municipality to hold Design Contests and to procure from certain social enterprises (philanthropic institutions and persons with disabilities) without competition. These new provisions more closely align with the Province of Nova Scotia and Trade Agreements in an effort to provide marketplace consistency.
- **Special Services:** This change more closely aligns to the conditions and limits for use of Architects, Engineers and Surveyors with the Province of Nova Scotia process for similar services, in an attempt to provide marketplace consistency and, under the stated conditions, will reduce the award time for these services.
- **Award Authority:** Changes in limits are based on a jurisdictional scan and an analysis of publicly tendered purchases for 2015/16. The changes in limits will allow the Municipality to seek administrative efficiencies for the approval of contracts between \$500,000 and \$1,250,000. Under the current policy, all awards over \$500,000 require Council approval, despite the fact that Council has pre-approved budgets and the municipality's limited ability to award to tender contracts other than to the low bidder. Providing conditional authority to Directors reflects similar practice to the Province of Nova Scotia and other jurisdictions, recognizes Council's budget approval process, and could allow paving, sidewalk and other time sensitive tenders to be approved for award within 24 to 48 hours of closing under the constraints of the Policy, while maintaining the responsibility of the CAO.

It is important to note that long periods between closing and the award expose the Municipality to a number of potential risks, including:

- a decrease in potential bidders due to the reluctance of Contractors to commit resources necessary to bid on contracts they know may have an undefined process delay
 - the potential need to expedite work post-award via change orders, at an increased cost to the Municipality, in order to complete projects on time
 - chain reaction delays/impacts on other dependent procurements, and
 - failure to meet citizen expectations
- **Signing Authority:** Sets out the authority of HRM staff to sign contracts on behalf of the Municipality once they are awarded. Signing authority was previously addressed in a separate directive from the CAO.
 - **Contract Management:** Sets out the authorities and requirements for making contract amendments, exercising contract options, consenting to contract assignments, and terminating contracts. The current policy is largely silent on contract management matters which have caused administrative difficulties. The new requirements and authority limits for making contract amendments are consistent with the Auditor General's recommendations in the Washmill Report.
 - **Vendor Performance and Termination:** Changes clarify the responsibilities of the Business Unit in the tracking of vendor performance, defines requirements for considering the disqualification of bidders, confirms authority of CAO in an attempt to mitigate performance risks more effectively, and allows owners and principals to be disqualified so that new company names cannot be used to avoid disqualification.
 - **Disposal of Surplus Assets:** The new provisions clarify the process for the disposal of surplus assets. The new process allows for the CAO to donate or sell surplus assets at less than market value to Not For Profits, Crown Corporations, School Boards, or any level of government, where the undepreciated value of the surplus asset does not exceed \$10,000. The current policy requires all less than market value disposals of surplus assets be approved by Council.
 - **Appendix A – Exemptions:** This appendix adds specific Professional Services and Cultural Industries to the list of goods and services exempt from the application of the Policy, in alignment with the Atlantic Procurement Agreement.

FINANCIAL IMPLICATIONS

The Procurement Policy provides:

1. Direction for the expenditure of funds to complete the programs approved by Halifax Regional Council in the operating and capital budget, and planning processes
2. A fair, open, consistent and transparent process for the procurement of goods, services, construction and facilities, in an attempt to achieve best value for the Municipality
3. Consideration of the total cost of purchasing goods, services, construction and facilities rather than limiting considerations to lowest invoiced price.
4. Use of procurement methods that are consistent with the Nova Scotia Public Procurement Act and encourage competitive bidding, and a strategic and sustainable approach to public sector procurement.

All of these objectives (outcomes) ensure HRM is receiving best value for taxpayers. A failure to amend the policy will result in a continuation of issues identified to date, including significant inefficiencies and unnecessary red tape.

RISK CONSIDERATION

There may be some risk in clearly presenting and training staff in the interpretation and use of the new Policy. Procurement will work with internal communications professionals to deliver an appropriate communication and training strategy.

COMMUNITY ENGAGEMENT

Upon approval of the Policy, Procurement will initiate an outreach campaign to appropriate market representatives to explain the impacts on doing business with the Municipality.

ENVIRONMENTAL IMPLICATIONS

N/A

ALTERNATIVES

1. Council could adopt the policy with approval limits different than those proposed.
2. Council could adopt the policy with more frequent reporting requirements for CAO awards than those proposed.
3. Council could reject the adoption of the new Procurement Policy.

ATTACHMENTS

Attachment A - Administrative Order 2016-005-ADM - Procurement Policy

A copy of this report can be obtained online at <http://www.halifax.ca/boardscom/SCfinance/index.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

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Appendix A

ADMINISTRATIVE ORDER 2016-005-ADM

PROCUREMENT ADMINISTRATIVE ORDER

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**ADMINISTRATIVE ORDER NUMBER 2016-005-ADM
PROCUREMENT ADMINISTRATIVE ORDER**

BE IT RESOLVED, as an Administrative Order of the Council of the Halifax Regional Municipality, as follows:

Short Title

1. This Administrative Order may be cited as Administrative Order Number 2016-005-ADM, the *Procurement Policy*.

Purposes

2. The purposes of this Administrative Order are to:

- (a) provide for the procurement of Goods, Services, Construction and Facilities by the Municipality in a fair, open, consistent and transparent manner resulting in Best Value;
- (b) provide direction for the expenditure of funds to complete the programs and projects approved by Council in the business planning and budget process;
- (c) promote procurement processes and decisions that are consistent with the strategic goals and objectives of the Municipality;
- (d) provide for sustainable procurement by integrating environmental, economic and social considerations in the procurement process;
- (e) maintain ethical business practices;
- (f) respect regional, national and international trade agreement obligations and other applicable legislation; and
- (g) encourage competitive bidding for the supply of Goods, Services, Construction and Facilities.

Interpretation

3. In this Administrative Order,

- (a) “Agent” means a person or entity expressly appointed through a written contract with the Municipality to purchase Goods, Services, Construction or Facilities on behalf of the Municipality;
- (b) “Award” means the decision to enter into a contract for Goods, Services, Construction and Facilities with a particular vendor;

(c) “Best Value” means the bid that is determined by the Municipality to be in its best interests, not necessarily the lowest price bid, which is determined by evaluation of bids based on criteria or factors that may include purchase price, life cycle cost considerations, environmental and social considerations, delivery, servicing, past experience and performance, and any other criteria or factors stated in the bid documents;

(d) “Business Unit” means the user departments of the Municipality, Halifax Regional Police, Halifax Regional Fire & Emergency, and Halifax Public Libraries;

(e) “CAO” means the Chief Administrative Officer of the Municipality;

(f) “Construction” means the construction, reconstruction, demolition, repair or renovation of a building, structure, road or other engineering or architectural work, excluding professional consulting services related to the construction contract unless they are included in the procurement;

(g) “Contract” means a contract for the purchase by the Municipality of Goods, Services, Construction or Facilities, including the issuance of a purchase order or the execution of any agreement evidencing the obligation;

(h) “Council” means the Council of the Municipality;

(i) “Director” means the Director of a Business Unit, the Deputy Chief Administrative Officer, the Chief of Police, the Chief of Fire and the Chief Executive Officer of Halifax Public Libraries;

(j) “Facilities” means building lease requirements covering the conveyance to the Municipality as tenant of the right to use tangible building property for a specific period of time in return for rent;

(k) “Goods” means materials, furniture, merchandise, equipment, stationery and other supplies required by the Municipality for the transaction of its business and affairs, including services that are incidental to the provision of such supplies;

(l) “Manager” means a person who has a managerial role within a Business Unit and a direct reporting relationship to the Director of that Business Unit or to the CAO

(m) “Municipality” means the Halifax Regional Municipality;

(n) “Personal Services Contract” means an agreement, whether or not in writing, establishing an employment relationship between an individual and the

Municipality and includes an amendment or extension of such agreement;

(o) “Procurement Section” means the organizational unit within the Municipality responsible for managing the procurement of Goods, Services, Construction and Facilities for the Municipality;

(p) “Procurement Web Portal” means the public procurement website maintained and operated by the Government of the Province of Nova Scotia;

(q) “Requisition” has the meaning set out in section 13(1);

(r) “Services” means services required by the Municipality for the transaction of its business and affairs, excluding services provided by an employee of the Municipality through a Personal Services Contract; and

(s) “Surplus Assets” means Goods owned by the Municipality with remaining useful life, which do not meet a Business Unit’s current or foreseeable future need.

GENERAL

Application

4. Subject to section 5, this Administrative Order shall apply to the procurement of Goods, Services, Construction and Facilities by the Municipality.

Exemptions

5. The procurement of Goods, Services, Construction and Facilities listed in Appendix A are exempt from the application of this Administrative Order.

Purchases by Agents

6. (1) Agents are exempt from the application of this Administrative Order, but are required to comply with the *Public Procurement Act* and the terms and conditions of the Agent’s written contract with the Municipality when making purchases on behalf of the Municipality.

(2) No person or entity shall purchase Goods, Services, Construction or Facilities on behalf of the Municipality unless expressly appointed as Agent in a written contract with the Municipality.

Lowest Bidder

7. The Municipality shall not be obligated to accept the lowest bid or to accept any bid.

Calculation of Contract Amounts

8. Contract amounts referenced in this Administrative Order shall be construed to

be the sum of all costs for the duration of the contract plus all applicable net taxes, less all rebates and revenues.

Conflict

9. Where there is a conflict with the application of this Administrative Order and the *Public Procurement Act* and the regulations thereunder, the Act and its regulations shall prevail.

RESPONSIBILITIES

Chief Administrative Officer

10. The CAO may authorize additional procedures and protocols not inconsistent with this Administrative Order and may delegate his or her authority under this Administrative Order to employees.

Business Units

11. Each Business Unit shall be responsible for:

- (a) identifying and initiating procurement activities within their Business Unit;
- (b) complying with this Administrative Order and other procurement procedures established by the Procurement Section;
- (c) monitoring, managing and enforcing contracts requisitioned by their Business Unit; and
- (d) ensuring the specific objectives of contracts requisitioned by their Business Unit are achieved.

Procurement Section

12. The Procurement Section shall be responsible for:

- (a) facilitating the procurement of Goods, Services, Construction and Facilities according to this Administrative Order;
- (b) establishing appropriate procurement procedures consistent with this *Administrative Order*, the *Public Procurement Act*, applicable trade treaties, and the Province of Nova Scotia's *Construction Contract Guidelines*;
- (c) determining the appropriate procurement strategy for acquiring Goods, Services, Construction and Facilities and the most appropriate procurement process by which they will be acquired;

(d) approving and maintaining the Municipality's standard terms for contracts for Goods, Services, Construction and Facilities, in consultation with Legal Services;

(e) collaborating with Business Units to consider contract and risk management practices in the procurement cycle, and to combine requirements where possible to achieve efficiencies and reduce costs to the Municipality;

(f) collaborating with other governments, public sector entities as this term is defined under the *Public Procurement Act*, boards, commissions, and associations such as the Federation of Canadian Municipalities and the Union of Nova Scotia Municipalities, to attain greater consistency and efficiencies in the procurement process;

(g) administering each call for bids and ensuring the fair evaluation of bids;

(h) facilitating the negotiation, if required, of terms and conditions for contracts for Goods, Services, Construction and Facilities;

(i) administering contracts for Goods, Services, Construction and Facilities;

(j) monitoring compliance with this Administrative Order and notifying Directors of non-compliance with it;

(k) providing professional procurement advice; and

(l) disposing of Surplus Assets.

PURCHASING PROCESSES

Commencement of Procurement Process – Requisitions

13. (1) A "Requisition" is:

(a) a request made to the Procurement Section to purchase Goods, Services, Construction or Facilities; or

(b) a request made to the Procurement Section to create a Standing Offer for future purchases;

(2) A Requisition shall include the following information:

(a) a description and an estimated value of the Goods, Services, Construction or Facilities required;

(b) the budget from which funds will be allocated for the purchase; and

(c) any other information required by the Procurement Section.

(3) Subject to subsection (4) of this section, the procurement of Goods, Services, Construction and Facilities shall be commenced by Requisition (including the establishment of Standing Offers, and purchases where the requirement is covered by the municipal stores system).

(4) A Requisition is not required to commence the procurement process:

(a) for Low Value purchases valued at less than \$10,000 made pursuant to section 18;

(b) for purchases made under Emergency Circumstances pursuant to section 27; or

(c) for draws made from Standing Offers.

Authority to Make a Requisition

14. (1) The authorities for making a Requisition are as follows:

Manager	Director	CAO
Per delegation of authority from Director [not to exceed \$100,000]	Any amount	Any amount

(2) The Procurement Section shall maintain a list of all delegations of Requisition authority submitted by the Director pursuant to subsection (1) of this section

(3) No Requisition shall be made unless the funds for the estimated purchase amount are clearly identified in a Council approved budget or business plan.

Posting of Procurement Opportunities

15. (1) Subject to subsection (2) of this section, the Procurement Section shall post all procurement opportunities with estimated values of \$10,000 or greater on the Procurement Web Portal.

(2) The Procurement Section is not required to post Requests for Quotation valued at less than \$25,000 on the Procurement Web Portal.

Procurement Opportunities and Bids to be in Writing

16. (1) Subject to subsection (2) of this section, the Procurement Section shall ensure that all procurement opportunities and bids valued at \$10,000 or greater are

made in writing.

(2) Requests for Quotation and bids in response thereto valued at less than \$25,000 may be made verbally if, in the opinion of the Procurement Section, there is insufficient time to issue a Request for Quotation in writing or to consider written bids;

Openings

17. (1) Bids will be accepted in accordance with the closing time and date stipulated in the solicitation.

(2) The Manager of Procurement may conduct public openings at his or her discretion.

(3) Where the Manager of Procurement determines that there will be a public opening, the public opening shall be at a designated location, date and time.

STANDARD METHODS OF PROCUREMENT

Low Value

18. A Low Value purchase is a purchase that is under \$10,000 and is:

(a) not routine in nature; and

(b) not included in a Standing Offer or available in inventory.

Standing Offers

19. (1) A Standing Offer is a formal offer whereby a vendor commits to providing Goods, Services, Construction or Facilities to the Municipality at specific prices for a specific period of time, when and if required by the Municipality.

(2) The Manager of Procurement may negotiate and make modifications to a Standing Offer that he or she determines to be in the best interests of the Municipality, such as adding or deleting items, or extending the duration of a Standing Offer.

(3) Standing Offers of the Government of the Province of Nova Scotia or other public sector entities may be used where, in the opinion of the Manager of Procurement, it is in the best interest of the Municipality.

(4) Standing Offers may be established through a Request for Standing Offer or through a separate method of procurement such as a Request for Tender, Request for Quotation, Request for Proposal, or Sole Source.

(5) For the purposes of contract award, the total estimated value of the

Standing Offer shall be used to determine the appropriate approval authority.

(6) Individual draws from a Standing Offer shall be approved by a Director.

(7) A Director may delegate his or her authority under subsection (6) of this section, and a list of such delegations shall be provided to, and maintained by, the Procurement Section.

Request for Tender

20. (1) A Request for Tender is a formal, competitive, sealed-bidding process.

(2) A Request for Tender may be used when:

(a) detailed specifications are available that permit the evaluation of bids against stated criteria;

(b) an award can be made without negotiation; and

(c) the bids and prices are provided without condition or reservation.

(3) A contract resulting from a Request for Tender is normally awarded to the lowest total cost or highest revenue bid received from a qualified bidder meeting the requirements of the Request for Tender (unless such bid is determined not to be Best Value or in the best interest of the Municipality).

Request for Proposal - Generally

21. (1) A Request for Proposal is an invitation to proponents to describe how their services, methods, equipment or products can address and meet specific needs or resolve a problem, requirement, or objective of the Municipality.

(2) A Request for Proposal shall include evaluation criteria that will be used to score the proposals.

(3) A Request for Proposal shall be either binding or non-binding.

(4) An award of a contract resulting from a binding or non-binding Request for Proposal shall be made to the proponent whose proposal is determined to provide Best Value or otherwise be the most advantageous to the Municipality based upon criteria for evaluation set out in the Request for Proposal and fairly applied to all proposals.

(5) As price is only one of the factors taken into consideration in

obtaining Best Value, the contract may not necessarily be awarded to the lowest price proposal.

Binding Request for Proposal

22. (1) A binding Request for Proposals is a formal, competitive, sealed-bidding process.

(2) In a binding Request for Proposals there is no negotiation with bidders but discussions may be conducted with proponents after the date for the receipt of proposals for clarification purposes, provided that:

- (a) all proponents are treated fairly;
- (b) the content of the discussion with one proponent is not disclosed to another proponent; and
- (c) no person other than the Procurement Section or Legal Services has discussions with proponents.

Non-binding Request for Proposal

23. (1) A non-binding Request for Proposal is a flexible format that permits negotiation between the Municipality and one or more proponents.

(2) For a non-binding Request for Proposal, proponents are not required to submit bid security and may modify or revoke their proposals at any time prior to the execution of a contract.

Request for Quotation

24. (1) A Request for Quotation is an informal request for prices that:

- (a) is either publicly posted or made by invitation to at least 3 vendors;
- (b) is normally used:
 - (i) where a bid deposit and a performance bond is not required; and
 - (ii) where the price does not warrant the time and level of effort required for a formal tender process.

ALTERNATIVE METHODS OF PROCUREMENT

Sole Source

25. (1) A Sole Source purchase is a contract made with a vendor for the supply of Goods, Services, Construction or Facilities without going through a competitive process.

(2) A Sole Source purchase shall be negotiated or the result of a call for bids, or a combination thereof.

(3) A Sole Source Purchase may occur:

(a) to ensure compatibility with existing Goods or Services, to recognize exclusive rights, such as exclusive licenses, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative;

(b) where there is an absence of competition for technical reasons and the Goods or Services can be supplied only by a particular supplier and no alternative or substitute exists;

(c) for the procurement of Goods or Services the supply of which is controlled by a supplier that is a statutory monopoly;

(d) for the purchase of Goods on a commodity market;

(e) for work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;

(f) for work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work;

(g) for a contract to be awarded to the winner of a design contest;

(h) for the procurement of a prototype of a first Good or Service to be developed in the course of/and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;

(i) for the purchase of Goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;

(j) for the procurement of original works of art;

(k) for the procurement of Goods intended for resale to the public;

(l) for the procurement from philanthropic institutions, prison labour or persons with disabilities;

(m) for the procurement of Goods, Services, Construction or Facilities from a public body or a not-for-profit corporation; or

for the procurement of Goods or Services (not exceeding \$25,000) for the purpose of evaluating or piloting new or innovative technology with demonstrated environmental, economic or social benefits when compared to conventional technology, but not for any subsequent purchases.

Exceptional Circumstances

26. (1) An Exceptional Circumstances purchase is a contract made with a vendor for the supply of Goods, Services, Construction or Facilities that may or may not be made through a competitive process.

(2) An Exceptional Circumstances purchase shall be negotiated or the result of a call for bids, or a combination thereof.

(3) Exceptional Circumstances exist:

(a) where:

(i) there is the absence of bids in response to an open or selective public tender, or

(ii) the bids submitted have not been in conformity with the essential requirements in the public tender;

(b) where Goods or Services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest;

(c) where compliance with the open tendering provisions of this Administrative Order would interfere with the Municipality's ability to maintain security or order, or to protect human, animal or plant life or health;

(d) where items are offered for purchase by tender or auction; or

(e) where the extension to the duration of an existing contract or the reinstatement of an expired contract would be more cost effective or beneficial to the Municipality.

Emergency Circumstances

27. (1) An Emergency Circumstances purchase is a contract made with a vendor where an unforeseeable situation of urgency exists and the Goods, Services, Construction or Facilities cannot be obtained in time by means of open procurement procedures.

(2) Emergency Circumstances purchases shall be completed using the most expedient method, but shall take economy into consideration.

(3) For Emergency Circumstances purchases, the authorizing person is required to report the emergency in a timely fashion, in writing, to the next level of authority and a copy shall be provided to the Manager of Procurement.

OTHER PROCUREMENT INSTRUMENTS

General

28. (1) The following is a non-exclusive list of other procurement instruments that may be used by the Procurement Section for the purposes described or to create a shortlist of potential bidders, but shall not be used for the purpose of purchasing Goods, Services, Construction or Facilities.

(2) A standard or alternative method of procurement identified above shall be used to make purchases.

Request for Information

29. A Request for Information is an invitation for the marketplace for the purpose of providing information on the scope or specifications of Goods, Services, Construction or Facilities contemplated to be procured by the Municipality.

Request for Expression of Interest

30. A Request for Expression of Interest is an invitation for the purpose of determining the interest in the marketplace in providing Goods, Services, Construction or Facilities contemplated to be procured by the Municipality.

Request for Qualification

31. A Request for Qualification is an invitation to suppliers of Goods, Services, Construction or Facilities for the purpose of pre-qualifying bidders for other solicitations where the nature of the Goods, Services, Construction or Facilities to be acquired

requires ascertaining minimum standards.

SPECIAL SERVICES

Engineers, Land Surveyors and Architects

32. (1) Contracts for Services provided by Engineers, Land Surveyors and Architects with fees estimated to have a value greater than \$100,000 or a duration estimated to exceed 6 months, shall be procured by a standard method of procurement, with notice of the solicitation given on the Procurement Web Portal.

(2) Contracts for Services provided by Engineers, Land Surveyors and Architects with fees estimated to have a value less than or equal to \$100,000 and a duration estimated not to exceed 6 months may either be procured by a standard method of procurement, or from professional firms who are prequalified and registered on a list maintained by the Procurement Section.

(3) The Procurement Section shall be guided by the Province of Nova Scotia's "*Procurement Process: Architects & Professional Engineering Services*" for the procurement of Services provided by Engineers, Land Surveyors and Architects, except that:

(a) the Request for Qualifications shall be advertised by the Procurement Section every 2 years (rather than annually); and

(b) contracts shall be awarded to the firm that submits the lowest price or represents Best Value (rather than the firm that submits the median price).

Auditing Services

33. (1) Services of external financial auditors shall be acquired by a standard method of procurement at intervals not greater than every 5 years.

(2) Services of external financial auditors may be contracted on a 1 year term, to be renewed on an annual basis up to a 5 year maximum, on terms satisfactory to the Municipality.

(3) Selection of an external financial auditor shall be completed by the Audit and Finance Standing Committee of Council who shall recommend the selection of an External Auditor to Council.

(4) Annual renewal of the contract for External Audit services shall be made by the Audit and Finance Standing Committee.

AWARDING CONTRACTS

Pre-requisites to Award Contracts

34. (1) The following pre-requisites shall apply to the approval of any contract award:

(a) the funds and program shall be approved by Council as part of the business planning and budget process;

(b) the Goods, Services, Construction or Facilities shall be consistent with the approved program deliverables;

(c) the purchasing processes set out in sections 13 through 17 shall have been followed; and

(d) The award must be the result of one of the standard or alternative methods of procurement described in sections 18 through 27.

(2) Any award requiring the approval of the CAO or Council under section 36 requires a recommendation report and any such report shall:

(a) be prepared by the Business Unit;

(b) be approved by the Manager of Procurement or his or her delegate;

(c) provide details of the recommended purchase and describe the method of procurement used; and

(d) be signed by the appropriate Director and forwarded to the CAO or Council for approval.

(3) Awards may be subject to other policies or legislative requirements such as the Transaction Policy, the Changes to Cost Sharing for Capital Projects Policy, or Ministerial Approval for long term commitments.

Tie Bids

35. (1) In the case of a tie bid, the Manager of Procurement may request the tie bidders submit a best and final offer.

(2) In the case the best and final offer pursuant to subsection (1) of this section is not successful and a tie bid still occurs, the contract may be awarded on the basis of a coin flip.

Award Authority

36. (1) The approval authority limits for the awarding of contracts are as follows:

Method	Manager	Director	CAO	Council
Low Value Purchase	\$10,000	\$10,000	\$10,000	\$10,000
Request for Tender, Request for Quotation, and Request for Proposal	Per delegation of authority from Director [not to exceed \$100,000]	\$100,000*	\$1,250,000	Any amount
Standing Offer (if established through a standard method of procurement)	\$5,000,000 (Manager of Procurement only)	\$5,000,000 (Director of Finance only)	\$5,000,000	Any Amount
Sole Source	Per delegation of authority from Director [not to exceed \$25,000]	\$50,000	\$100,000	Any amount
Exceptional Circumstances	Not permitted	Not permitted	Any amount	Any amount
Emergency Circumstances	Any amount	Any amount	Any amount	Any amount

*not exceeding \$2,000,000 if clause 36(2)(f) applies

(2) Notwithstanding the approval authority limits listed in the chart in subsection (1) of this section:

(a) the CAO may approve a contract award of any amount when Council is on summer or December holiday break;

(b) a contract must be forwarded to the CAO for approval where it involves financing arrangements (such as loans, leases and rentals) extending beyond the end of the current fiscal year, and to Council where it involves financing arrangements extending beyond 5 years;

(c) a contract award must be forwarded to Council for approval where there is a legislative requirement for Council to approve the award, or where the CAO is of the opinion that the award is a matter best dealt with by Council;

(d) a contract award must be reviewed by Legal Services and forwarded to the CAO or Council for approval where the proposed vendor is not the lowest-priced bidder or highest-scoring proponent;

(e) the approval authorities for awards related to the procurement of Facilities are set out in a separate Administrative Order or policy of Council such

as *The Transaction Policy*; and

(f) a Director may approve the award of a contract not exceeding \$1,250,000 when:

(i) prior to Requisition, the Director prepares a report for the CAO recommending the purchase and receives written approval from the CAO to make the purchase;

(ii) the award is the result of a Request for Tender, Request for Quotation or Request for Proposal;

(iii) the value of the contract to be awarded does not exceed 110% of the estimated value of the contract as reported to, and approved by, the CAO in accordance with sub-clause (i) of this clause; and

(iv) the proposed vendor is the lowest-priced bidder or highest-scoring proponent.

Signing Authority

37. (1) The following pre-requisites apply to the execution of any contract on behalf of the Municipality:

(a) the award of the contract must be approved in accordance with the authorities set out in section 36 of this Administrative Order; and

(b) the contract must be stamped “Approved as to Form and Authority” by Legal Services or be in the form of a template approved by Legal Services.

(2) The authorities for the execution of procurement contracts on behalf of the Municipality are as follows:

Position	Signing Authority
CAO	Any contract
Manager of Procurement	Any contract where the vendor is bound to the Municipality’s standard terms & conditions
Director	Any contract where the award has been approved by the Director or by an employee in the Director’s Business Unit.
Manager	Per delegation of authority from his or her Director

(3) The CAO may set further conditions or procedures and make further delegations regarding signing authority provided that such conditions, procedures and

delegations are not inconsistent with this Administrative Order.

(4) A Director may delegate to one or more Managers in his or her Business Unit, his or her authority to execute contracts provided that:

(a) the Procurement Section is given a list of such delegations showing the delegate's name, position number and amount that he or she has been delegated; and

(b) the amount of the delegation is no greater than the Director's award authority pursuant to section 36.

Posting of Bid Results

38. The Procurement Section shall post on the Procurement Web Portal the results of all solicitations publicly advertised on the Procurement Web Portal, including a list of vendors that submitted a bid, the winning bidder and the award amount.

Reporting of Awards

39. (1) The Manager of Procurement shall provide a quarterly report to Council containing a list of:

(a) all awards approved by the CAO,

(b) all awards exceeding \$100,000, and

(c) all awards of Sole Source, Emergency Circumstances and Exceptional Circumstances purchases exceeding \$50,000.

The report shall show the name of the contract, the name of the bidders and the amount of each bid (or the name of proponents and the score of each proposal), the amount of the contract award, the budgetary estimate and the project account number.

CONTRACT MANAGEMENT

Contract Amendments

40. Contract amendments shall be made in accordance with Appendix B.

Contract Options

41. (1) The exercising of any option under a contract is subject to the identification and availability of sufficient funds approved by Council through the business planning and budget process.

(2) The authority to exercise any contractually defined option, including an

option to extend a contract, is as follows:

Option Authority	Total Cost of Exercising Option
Director	\$500,000
CAO	\$1,250,000
Council	Any Amount

Contract Assignments

42. The authority to consent to a request by a vendor to assign a contract to another person or entity is as follows:

Assignment Authority	Total Value of Contract
Manager of Procurement	\$500,000
CAO	\$1,250,000
Council	Any Amount

Contract Terminations

43. (1) The failure of a vendor to fulfill its obligations under any contract with the Municipality shall be documented by the Business Unit responsible for the contract.

(2) Legal Services and the Procurement Section shall be consulted prior to the termination of any contract by the Municipality.

(3) The authority to approve the termination of a contract due to the default by the vendor of its obligations, or otherwise is as follows:

Termination Authority	Total Value of Contract
Director	\$500,000
CAO	\$1,250,000
Council	Any Amount

VENDOR PERFORMANCE

Performance Files

44. (1) Business Units shall complete a vendor evaluation scorecard at the completion of each contract or as otherwise directed by the Manager of Procurement.

(2) The Procurement Section shall maintain vendor performance files that contain information supplied by Business Unit and Procurement Section staff, including vendor evaluation scorecards.

(3) Vendor performance may be evaluated based on factors including safety, project management, scheduling and overall quality of work.

Disqualification from Bidding

45. (1) Upon reasonable notice in writing to the vendor involved, and after a reasonable opportunity for response, a vendor may be disqualified or suspended from bidding on any Municipality solicitation for a period not exceeding 5 years for any of the following reasons:

- (a) conviction of a vendor or a director, officer, owner or principal of a vendor for a criminal offense relating to:
 - (i) obtaining or attempting to obtain a contract or subcontract, or
 - (ii) any indication of a lack of business integrity or honesty;
- (b) serious breach of contract indicating an unwillingness or inability of the vendor to perform a contract in accordance with the terms and conditions or specifications thereof;
- (c) unsatisfactory performance of the vendor for one or more contracts with the Municipality;
- (d) the offer of any gratuity to a member of Council, official or employee of the Municipality by a vendor for consideration; or
- (e) the engagement by the vendor in any frivolous, vexatious or abusive litigation against the Municipality.

(2) A written decision shall be issued to the vendor disqualified or suspended, setting out its reasons for disqualification or suspension.

(3) Disqualification of a vendor shall be approved by the CAO.

(4) Disqualification applies to the vendor and its owner(s) and principal(s).

Debriefings

46. (1) A bidder may request a debriefing after a contract is awarded if the request is made in writing to the Manager of Procurement within 10 business days of the award notice being posted on the Procurement Web Portal.

(2) At a debriefing, bidders can find out how their bid scored against published criteria, obtain comments from the evaluation team on their bid, and gather information on how future submissions may be improved.

(3) At a debriefing, bids shall not be compared to each other, nor shall information on other bids be provided.

Complaints

47. Complaints from bidders shall be made and addressed in accordance with the procedure set out in Appendix C.

DISPOSAL OF SURPLUS ASSETS

Method of Disposal

48. (1) Where practical, Business Units shall make Surplus Assets available to other Business Units and Agents before seeking to dispose of them outside of the Municipality.

(2) The Procurement Section shall arrange for the sale of Surplus Assets that cannot be redistributed internally.

(3) Surplus Assets shall be sold by the most effective means in order to obtain the highest net value for the Municipality.

(4) The sale of Surplus Assets:

(a) not exceeding \$100,000, shall be approved by the Manager of Procurement; and

(b) exceeding \$100,000 shall be approved by the CAO.

(5) Notwithstanding subsection (3) of this section, Surplus Assets may be sold at less than market value or donated to a not-for-profit corporation, association, or entity or any Municipality, Crown Corporation, School Board, or any level of government. Such sales or donations shall be approved by the CAO unless the undepreciated value of the Surplus Assets exceeds \$10,000, in which case such sales or donations shall be approved by Council.

(6) Surplus Assets that cannot be sold or donated, or for which sales costs exceed the anticipated revenue, shall be disposed of by a cost effective disposal method by the Business Unit owning the asset and such assets shall be considered as solid waste and disposed of in an environmentally responsible manner, consistent with the principles of sustainable development and in accordance with governing legislation

for waste disposal.

TRANSITION AND REPEAL

Transition

49. A reference in an enactment to Administrative Order 35, *the Procurement Policy*, or part thereof, is to be read as including a reference to the provisions of this Administrative Order relating to the same subject-matter.

Repeal

50. Administrative 35, the *Halifax Regional Municipality Procurement Administrative Order*, adopted by Council on June 8, 2004 and all amendments thereto is repealed.

Done and passed in Council this _____ day of _____, 2016.

Mayor

Municipal Clerk

I, _____, Municipal Clerk of Halifax Regional Municipality, hereby certify that the above-noted Administrative Order was passed at a meeting of Halifax Regional Council held on _____.

Municipal Clerk

APPENDIX A LIST OF EXEMPTIONS

1. The following purchases and expenditures shall be exempt from the application of this Administrative Order:

(a) **Professional Services:**

Services that may, under the laws of Nova Scotia, only be provided by the following licensed professionals: medical doctors, dentists, nurses, pharmacists, veterinarians, engineers*, land surveyors*, architects*, accountants**, lawyers*** and notaries.

* Engineers, Land Surveyors and Architects

Services provided by Engineers, Land Surveyors and Architects are only exempt from the application of this Administrative Order if such Services have an estimated value of less than \$100,000 and an estimated duration of less than 6 months. Such Services shall be procured in accordance with section 32 of this *Administrative Order*.

** Accountants

Notwithstanding that Services provided by Accountants are otherwise exempt from the application of this Administrative Order, the procurement of Auditing Services shall be done in accordance with section 33 of this *Administrative Order*.

***Lawyers

Notwithstanding that Services provided by Lawyers are otherwise exempt from the application of this Administrative Order, the CAO and the Director of Legal Services shall annually submit a joint report to Council on the use of external legal services.

(b) **Legal Services/Expenses (in addition to those provided by lawyers):**

- (i) Expert Witness Services
- (ii) Legal Opinion and Representation
- (iii) Court Reporter Services
- (iv) Arbitrators and Moderators
- (v) Discoveries
- (vi) Legal Settlements

(c) **Petty Cash Items:**

Funds established in a Business Unit for the purchase of minor items when it would be otherwise impractical to purchase items through the usual purchasing methods

- (d) **Training and Education:**
 - (i) Conferences, Conventions and Tradeshow
 - (ii) Newspapers, Magazines & Periodicals, including subscriptions
 - (iii) Memberships
 - (iv) Seminars, Workshops not specifically designed for the Municipality

- (e) **Refundable Employee/Other Expenses:**
 - (i) Advances
 - (ii) University Courses
 - (iii) Entertainment
 - (iv) Miscellaneous Non-Travel
 - (v) Meal Allowances
 - (vi) Travel Expenses
 - (vii) Hotel Accommodation
 - (viii) Refunds: tax, recreation, permits

- (f) **Employer's General Expenses:**
 - (i) Payroll Deduction Remittances
 - (ii) Grants to Agencies
 - (iii) Medical & Dental Expenses
 - (iv) Debenture Payments
 - (v) Payment of Damages
 - (vi) Petty Cash Replenishment
 - (vii) Tax Remittances
 - (viii) Sinking Fund Payments
 - (ix) Employee Income
 - (x) Member's Discretionary Funds
 - (xi) Real Property, including land, buildings, easements, encroachments and licenses (except for the acquisition of Facilities where the Municipality is tenant)
 - (xii) Licenses, such as vehicles and elevators
 - (xiii) Charges to and from other government bodies or Crown corporations
 - (xiv) Bank Charges and Underwriting Services where covered by agreements
 - (xv) Livestock and Veterinary Services
 - (xvi) Grants and Contributions

- (g) **Culture and Cultural Industries**
 - (i) Performing Artists, such as Musicians, Clowns, Acrobats, Actors, and Educational Performers
 - (ii) Public art where purchased in compliance with the Municipality's Public Art Policy

- (iii) The publication and distribution of magazines, periodicals or newspapers but not including the sole activity of printing or typesetting
 - (iv) The production and distribution of audio, film or video recordings
 - (v) The production and distribution of music in print
- (h) **Utilities:**
- (i) Water and Sewage Charges
 - (ii) Power and Related Infrastructure when purchased from a Public Utility
 - (iii) Telephone Service Invoices
 - (iv) Cable Television Invoices
- (i) **Miscellaneous (under \$1,000)**
- (i) Customs Services Invoices
 - (ii) Taxi Services Invoices
 - (iii) Courier Invoices
 - (iv) Catering, groceries and small incidentals appropriate to purchase on the HRM Purchasing Card
 - (v) Postage
- (j) **Miscellaneous**
Print, Television and Radio Media Advertising Accounts

Approval Authorities

2. Unless stated otherwise, the approval and execution of purchases and expenditures that are exempt from the application of this Administrative Order are subject to the following authority limits:

Position	Authority Limit
Manager	\$25,000
Director	\$100,000
CAO	Any Amount

**APPENDIX B
CONTRACT AMENDMENTS**

1. No amendment to a contract shall be made unless the amendment is in the best interest of the Municipality.
2. No amendment that changes the price of a contract shall be agreed to without a corresponding change in requirement or scope of work, unless otherwise in the best interest of the Municipality.
3. Contract amendments that result in additional expenditures for the Municipality shall:
 - (a) meet the conditions for a Sole Source purchase; or
 - (b) be in the best interests of the Municipality.
4. Amendments to contracts shall be subject to the identification and availability of sufficient funds in the Council approved business planning and budget process.
5. Contract amendments shall be tracked and significant variances substantiated.
6. Approvals for contract amendments and copies of all contract amendments shall be documented and submitted to the Procurement Section. Where practical, such submission shall be done prior to the work being undertaken.
7. Approval formats for contract amendments will be as approved by the Manager of Procurement.
8. The approval and signing authority limits for cumulative contract amendments are as follows:

Position	Approval Authority
Director (or his or her delegate)	(a) \$15,000; or (b) a 15% increase to the originally approved contract amount, whichever is greater.
CAO	(a) \$20,000 or (b) a 20% increase to the originally approved contract amount, whichever is greater.
Council	Any amount

APPENDIX C BIDDER COMPLAINT PROCEDURE

Purpose

1. (1) The purpose of the bidder compliant procedure is to provide a mechanism for bidders to voice complaints respecting a particular procurement.
- (2) The bidder compliant procedure is not adjudicative in nature and shall not establish mechanisms to adjudicate substantive disputes.
- (3) Disputes over facts or over legal rights and obligations are beyond the scope of the bidder complaint process.

COMPLAINT PROCESS

Pre-Complaint

2. (1) Prior to initiating a complaint, bidders are strongly encouraged to resolve problems by contacting the procurement officer or consultant involved.
- (2) Experience has demonstrated that there are often minor errors, omissions or other inadvertent actions that can be quickly clarified or corrected to the satisfaction of the complainant thereby removing the cause of many complaints and concerns at the outset.

Complaint Submission

3. (1) A complaint is to be submitted in written form within 10 business days after a notice of contract award is posted to the Procurement Web Portal.
- (2) The complaint shall be addressed to:

Manager of Procurement
Halifax Regional Municipality
PO Box 1749
Halifax, NS B3J 3A5
4. A complaint shall contain the following information:
 - a) the name, telephone phone number, fax number, e-mail address, mailing address and contact person of the firm submitting the complaint;
 - b) the nature of the problem being encountered;
 - c) a description of the background leading to the problem, including relevant dates and tenders reference numbers;

c)the procurement officer or consultant contacted to review the problem originally and the results of those discussions; and

d) any action being requested of the Municipality.

Acknowledgement of Complaint

5. The Manager of Procurement will make every effort to acknowledge a formal complaint within 10 business days of receipt.

Review of Complaint

6. (1) On receipt of a written complaint, the Manager of Procurement shall conduct an initial review of the complaint to determine if further action is appropriate.

(2) After the initial review, the Manager of Procurement may dismiss the complaint in accordance with section 12 without further consideration if, in his or her opinion:

a) the complaint, on its face, is frivolous or invalid;

b) the complainant is not a participant in the competitive process (i.e. the complainant did not submit a bid);

i. the complaint is in respect of a procurement that was not made by or on behalf of the Municipality;

c)the complaint is made more than 10 business days after a notice of a contract award; or

d) the complaint is otherwise inappropriate for consideration.

7. After the initial review and if the complaint is not dismissed, the Manager of Procurement, or his or her delegate, will gather the appropriate competition documents, conduct interviews and if he or she deems necessary, meet with the complainant.

8. After the initial review, if, in the opinion of the Manager of Procurement, additional review is required, he or she may choose to form a review committee.

9. (1) If a review committee is formed, the findings and recommendations of the review committee will be submitted to the Manager of Procurement.

(2) The Manager of Procurement will review the findings and recommendations of the review committee.

Timeframe for Review

10. (1) A response to a complaint is to be made in a timely fashion.

(2) The Manager of Procurement will make every effort to respond in writing no later than 20 business days after completion of his or her initial review or after receiving the recommendations from a review committee, whichever is later.

(3) If a review extends longer than the 20 business days under subsection 2 of this section, the complainant will be advised, in writing, when they may expect a response to their complaint.

Resolving of Complaint

11. In addition to subsection 6(2) of this Appendix, a complaint may, at any time,

(a) be resolved or dismissed if, in the opinion of the Manager of Procurement, a complaint was the result of a properly applied fair procurement process; or

(b) be withdrawn by the complainant.

12. If a complaint is dismissed, a reply to the complaint will be prepared by the Manager of Procurement, and be forwarded to the complainant.

Retention of Complaint

13. (1) The Procurement Section shall retain complete documentation and records of the complaint, including a signed and dated record of all communications with suppliers and the decision of the Manager of Procurement.

(2) The retention will allow later verification by participants, auditors or senior officials to show that the procurement process was carried out in accordance with this Administrative Order and that the complaint was filed and handled in a timely fashion.

Annual Report of Complaints

14. All complaints shall be tracked by the Procurement Section and reported to the CAO on an annual basis.