

ATTACHMENT A

Section:	Equipment and Supplies	03
Subsection:	Procurement	1200
Title:	PROCUREMENT POLICY	01

PURPOSE

The City of Nanaimo (the “**City**”) is committed to fair, open and transparent acquisition of goods or services, construction-related services, consulting services, and revenue *Contracts* (collectively, the “**Goods & Services**”, each, the “**Goods or Services**”) that result in value-for- money for residents and other stakeholders.

The purpose of this Policy is to establish governance parameters for the purchasing of all *Goods & Services* for the City.

The Policy is intended to:

- i. Promote fair, open, and transparent purchasing practices for the City’s purchase of *Goods & Services*;
- ii. Protect the interests of the citizens of Nanaimo, ensuring the City obtains the best value and good outcomes for its expenditures; and
- iii. Establish controls for approval, process, advertising, and *Contract* requirements appropriate for a public institution.

DEFINITIONS

“**Appointed Officers**” means those individuals that are appointed to specific roles and form part of the administrative branch of the City.

“**Chief Administrative Officer**” means the person who is appointed to be the Chief Administrative Officer of the City.

“**Competitive Bid Process**” is the process by which competitive bids are considered for a contemplated purchase from various *Vendors* through processes where the bids are requested, received, evaluated and a *Contract* is awarded through a public process that promotes fairness and transparency.

“**Contract**” means a legally enforceable agreement between two or more parties. Legally binding contracts have six elements:

- (i) Offer;
- (ii) Acceptance;
- (iii) Contracting parties have the authority or capacity to enter into a binding agreement;
- (iv) Legal consideration (something of value, often money) is exchanged;
- (v) Lawful purpose; and,
- (vi) Genuine desire or intent to create a binding *Contract*.

“Council” means the elected council members of the City of Nanaimo.

“Department Head” means the manager of a City department who is the primary user or coordinator of the Goods or Services to be procured by the department, which can include Managers, Directors, Deputies, and General Managers.

“Director of Finance” means the individual who manages the City's financial assets while overseeing the Financial Planning, Accounting Services, Revenue Services, Purchasing, and Payroll divisions.

“Emergency” means a sudden, unexpected, or impending situation that may cause injury, loss of life, damage to the property, and/or interference with the normal activities of the City and which, therefore, requires immediate attention and remedial action.

“General Manager, Corporate Services” means the individual who is appointed to oversee the departments of Finance, Information Technology, Police Services and Emergency Management.

“Manager, Purchasing and Stores” means the manager of the City's central purchasing and stores department, or designate.

“Non-competitive Process” is a process of determining a *Vendor* for Goods or Services in which the *Competitive Bid Process* is not followed.

“Non-Compliance” occurs when a *Contract* for the purchase of Goods or Services was entered into, outside of the requirements of this Policy, and the circumstances were not otherwise exempt under Section 2 of this Policy.

“Project Manager” means a City employee who, on behalf of his/her department, is overseeing the procurement and general management of the Goods or Services being procured.

“Purchasing and Stores” is the City's centralized purchasing and stores department.

“RFX” – An acronym that means “request for X”, with X representing any of the formal bid documents used to obtain information or cost estimates for the procurement of goods, services or construction, including Request for Information (RFI), Request for Proposal (RFP), Request for Quotation (RFQ), Request for Tender (RFT) also known as Invitation to Tender (ITT), Request for Prequalification (RFPQ), Request for Statement of Qualifications (RFSOQ) and Notice of Intent (NOI).

“Single Source Purchase” means a non-competitive acquisition whereby purchases for goods and or services are directed to one source because of standardization, warranty, or other factors, even though other competitive sources may be available.

“Sole Source Purchase” means a non-competitive acquisition whereby the purchases for goods and or services are directed to the only available *Vendor* of that good and or service.

“Standard Operating Procedures” means those procedures and instructional guidelines issued and maintained by the Purchasing department that set out the procedural requirements to be carried out in fulfillment of this Policy.

“Surplus Goods” means any vehicles, equipment, furniture, materials, or supplies no longer required by the City but may have residual economic value.

“Vendor” means companies that could be or are contracted by the City to provide Goods & Services.

SCOPE

The Policy applies to all employees, volunteers and other authorized personnel responsible for purchasing *Goods & Services* for the City, responsible for approving the purchase of *Goods & Services*, or responsible for executing contracts for the purchase of *Goods & Services*, on behalf of the City.

POLICY

BC Community Charter
BC Freedom of Information and Protection of Privacy Act
New West Partnership Trade Agreement
Canadian Free Trade Agreement
Comprehensive Economic and Trade Agreement
City of Nanaimo, HR 4.1 Code of Conduct Policy
ADM-GOV-02-003 Records Management Policy

AUTHORITY TO ACT

Delegated to Staff.

RESPONSIBILITIES

Council to:

- Approve this Policy;
- Approve future amendments to this Policy; and
- Approve the budget to cover the acquisition of Goods or Services.

Chief Administrative Officer to:

- Implement this Policy

General Manager, Corporate Services to:

- Bring forward future amendments to this Policy for *Council's* consideration.

Director of Finance to:

- Ensure compliance with this policy, as required;
- Promote best practice procurement; and
- Approve Operating Procedures and Guidelines required to implement this Policy.

Department Heads to:

- Ensure departmental compliance with this Policy;
- Promote conduct and communication with *Vendors* that is fair, professional and respectful;
- Support procurement practices that promote and manage *Vendor* development and performance;
- Ensure funding is available for department purchases;
- Approve Sole and Single Source purchases; and
- Approve purchase contract content.

Project Managers to:

- Comply with this Policy;
- Use conduct and communication with *Vendors* that is fair, professional, and respectful;
- Support procurement practices that promote and manage *Vendor* development and performance;
- Ensure appropriate use of funding;
- Prepare Sole and Single Source justifications for approval; and
- Approve purchase contract content.

Manager, Purchasing and Stores to:

- Represent the City as its Purchasing Agent;
- Administer this Policy;
- Oversee and control the purchasing of all *Goods & Services*;
- Develop and maintain *Standard Operating Procedures* required to implement this Policy including but not limited to:
 - General processes and guidelines;
 - Processes to support local businesses within the provisions of applicable trade agreements; and
 - Processes to support Sustainable purchasing.
- Execute all approved Contracts on behalf of the City for the acquisition of *Goods & Services*; and
- Maintain a repository of purchase Contracts in accordance with the *City Records Management Policy*.

PROCESS

1. Organization

- 1.1 The City is organized with a central purchasing department and all purchases covered by this Policy shall be conducted through the central purchasing department, except as otherwise permitted and described under Section 2 of this Policy.
- 1.2 The City will have appointed at all times an individual to be the *Manager, Purchasing and Stores* to carry out the responsibilities set out in this Policy.
- 1.3 The procurement value thresholds and corresponding approval protocols will reflect the City's commitment to the following:
 - Responsible fiscal spending and management;
 - Fair, open, and transparent procurement practices; and,
 - Compliance with applicable trade agreements employing the most stringent of the standards.

2. Application of Policy and Exemptions

2.1 The Policy does not apply to the following:

- a) Purchase of land and improvements;
- b) Disposition of land and improvements owned by the City;
- c) Licenses, leases and/or agreements related to real property owned by the City;
- d) Procurement and payment of *Goods & Services* including, but not limited to:
 - (i) courses, seminars, staff training, development training, workshops;
 - (ii) conventions;
 - (iii) association fees and membership dues;
 - (iv) payroll deductions;
 - (v) grants to other agencies and associations;
 - (vi) debt payments;
 - (vii) payment of damages or settlements;
 - (viii) petty cash replenishments;
 - (ix) RCMP contract payments;
 - (x) payments to partners for co-sponsored programs;
 - (xi) purchase of utility services, such as hydro, gas, ;
 - (xii) general postage; and,
 - (xiii) refundable employee expenses, including but not limited to travel expenses, parking, hotel, airline charges, mileage allowances, meals, and related incidentals.
- e) Payment to other governmental authorities and investments.
- f) Hiring of regular, temporary, and casual employees by the City.
- g) This Policy may not apply to the circumstances listed below provided the purchase procedure applied is not used to avoid competition, discriminate between *Vendors*, or protect *Vendors*.

Procurements:

- of used equipment;
- of goods at auctions;
- from philanthropic institutions, prison labour or persons with disabilities;
- from public body or a non-profit organization;
- of services provided by lawyers and notaries;
- of financial and banking services; and
- of goods intended for resale to the public.

3. Methods of Purchase

3.1 Sourcing

Sourcing is a process used to continually improve and re-evaluate supply chain activities. Sourcing may be used in circumstances where the internal information available regarding

either the type of procurement that is required or the capabilities of the market to deliver the requirement is insufficient.

Sourcing allows the City to gain information from the *Vendor* community without entering into a binding agreement between the City and pre-qualified respondents. Language must be clearly defined in the terms and conditions of these documents to ensure there is no obligation on the part of the City to call on any pre-qualified respondent to supply such goods, services or construction.

(i) REQUEST FOR INFORMATION (RFI)

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

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

(ii) REQUEST FOR PRE-QUALIFICATION (RFPQ)

An RFPQ is used to gather information regarding a *Vendor's* capability, capacity, and qualifications, to create a list of pre-qualified *Vendors*. The RFPQ may be used as the first stage of a two-stage process (followed by an RFQ, RFT or RFP), whereby only prequalified respondents are invited to take part in the competitive process.

3.2 Low-Value Purchase (LVP)

Purchases that are random in nature, not included in a standing agreement, not available from inventory, and under the value of \$5,000, do not require a purchase order. LVP requirements should be purchased using a procurement card.

Purchasing from local businesses has the benefits of nurturing economic development and reducing transportation costs and carbon emissions. Where ever possible, LVPs will include local business in the procurement.

3.3 *Competitive Process*

3.3.1 The City obtains comparative pricing for purchases whenever possible to maximize value for money and to comply with legislation governing public procurement. All purchases exceeding \$25,000 must use an open, transparent and non-discriminatory competitive selection process whereby competitive bids are obtained. The *Competitive Bid Process* is used to ensure competitive value for funds expended and to provide companies the opportunity to support City operations and projects. Competitive Bidding will comply with federal and provincial requirements for open tendering through an electronic tendering system (example: BC Bids) using the following primary *RFX* documents used for soliciting competitive bids:

- (i) Request for Quote (RFQ). An RFQ is used to solicit competitive bids, valued between \$25,000 and \$75,000 for services and \$25,000 and \$200,000 for construction, when

the solutions, specifications, performance standard(s) and timeframe(s) are defined.

- (ii) Request for Tender (RFT) or Invitation to Tender (ITT). An RFT or ITT is used to solicit competitive bids, valued over \$75,000 for *Goods & Services* and over \$200,000 for construction, when the solutions, specifications, performance standard(s) and timeframe(s) are defined. Tenders are typically awarded to the *Vendor* with the lowest cost.
- (iii) Request for Proposal (RFP). An RFP is normally for the provision of services, and allows the *Vendor* an opportunity to propose a solution to the City's requirement, which may include providing unique skills. This is used for all purchases over \$75,000 for *Goods & Services* and over \$200,000 for construction. The selection of the successful *Vendor* is based on the evaluated best overall value to the City.
- (iv) Request for Statement of Qualifications (RSOQ). An RSOQ is used where the best qualified and most compatible *Vendor* for a specific project is required. RSOQs are particularly valuable for situations where the scope of services required is not fully understood at the time of procurement or when attributes such as previous knowledge, innovation, and proprietary technology are required for success. An agreement is negotiated with the *Vendor* receiving the highest evaluated score for qualifications.

3.3.2 In accordance with the New West Partnership Trade Agreement (NWPTA), the Canadian Free Trade Agreement (CFTA), and the Comprehensive Economic and Trade Agreement (CETA), there will be no local preferences for competitive process purchases.

3.3.3 All competitive procurement opportunities shall be advertised in BC Bid, or similar public notice forum.

3.4 *Non-Competitive Process*

The City will use the *Competitive Bid Process* for purchases whenever possible. However, it is recognized that situations will exist where competitive selection is not practical. Any consideration to use a non-competitive selection process must be taken carefully and with an honest view of the conditions surrounding the purchase. Provided all competitive opportunities have been exhausted a Non-competitive purchase may be conducted using Single or Sole sourcing methods to make a purchase of *Goods & Services*.

All Non-competitive Purchases must be approved in writing by the *Department Head*.

A Notice of Intent to Award must be posted publicly prior to contracting a Non-competitive Purchase that exceeds a value of \$50,000.00.

3.4.1 *Single Source Procurement*

A *Single Source Purchase* may be conducted for the procurement of *Goods & Services* where there may be more than one *Vendor* capable of delivering the same goods or services. A *Single Source Purchase* shall not be pursued for the purposes of avoiding competition between *Vendors* 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. Single Source purchases shall be arranged by the *Manager, Purchasing and Stores* and shall be included in the quarterly report to *Council* prepared by the *Director of Finance* or his/her designate. The circumstances where single source purchases are allowed are as follows:

- (i) Where an unforeseeable *Emergency* situations exists;
- (ii) For matters involving security, or confidential issues, a purchase may be made in a manner that protects the confidentiality or security of the *Vendor* or the City;
- (iii) Where a contract is to be awarded under a cooperative type agreement that is financed, in whole or in part, by an international cooperation organization, only to the extent that the agreement between the entity and the organization include rules for awarding contracts that differ from the obligations set out in this Policy;
- (iv) Where construction materials are to be purchased and it can be demonstrated that transportation costs or technical considerations impose geographic limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt, compound and pre-mixed concrete for the use in the construction or repair of roads;
- (v) Where the City has a lease or rental contract with a purchase option and such purchase option could be beneficial to the City;
- (vi) Where the project is highly sensitive or confidential and broadcasting it via open competition is not appropriate;
- (vii) Where the work is a continuation or follow-up assignment to be undertaken by the original service provider, and an appropriate procurement process cannot otherwise be undertaken for other reasons provided in this Policy;
- (viii) The City can strictly prove that only one contractor is qualified, or is available, to provide the goods, services or construction;
- (ix) Where there is an operational requirement requiring compatibility, standardization and uniformity 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 supplier required for warranty purposes; same machinery required for operational purposes); or,
- (x) In the absence of a receipt of any responses to an *RFX* in accordance with this Policy.

3.4.2 *Sole Source Procurement*

A *Sole Source Purchase* may be conducted for the procurement of *Goods & Services* where the good or service is unique to a *Vendor*. *Sole Source Purchases* shall be arranged for by the *Manager, Purchasing and Stores* and shall be included in the quarterly report to *Council*. The circumstances where sole source purchases are allowed are as follows:

- (i) 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 service provided; or,
- (ii) Where *Goods* are offered for sale to the City by bid, auction or negotiation. Such purchase will be deemed to be a *Sole Source Purchase* and the *Director of Finance* may authorize the purchase if proven to be in the best interest of the City.

3.5 Unsolicited Bids

Unsolicited bids received by the City will be reviewed by the *Department Head* and the *Manager, Purchasing and Stores* or designate. Award of an unsolicited bid is done so on a non-competitive basis; therefore, the single or sole source purchase provisions of this Policy will apply.

3.6 *Emergency Purchases*

Emergency purchases can be made where the lack of immediate action is likely to adversely affect operations, disrupt services to the public, or involve risk to the safety of personnel and/or property. There are no financial limits to the emergency purchases; however, purchases must follow the steps identified in the *Standard Operating Procedures*.

4. **Vendor Management**

- 4.1 The City values the expertise, experience and quality of work provided by *Vendors*. To nurture and maintain lasting relationships and acceptable quality of *Goods & Services*, the City will manage all *Vendors* per the *Standard Operating Procedures*.
- 4.2 Purchasing and Stores, *Department Heads* and *Project Managers* are jointly responsible to enforce the terms and conditions of *Contracts*. *Department Heads/Project Managers* will be responsible to document *Vendor* performance in the contract file by means of a *Vendor* performance evaluation form.

In the event of a poor performance rating, *Purchasing and Stores* and *Department Heads* and *Project Managers* will develop *Vendor* performance corrective action plans to bring performance back to an acceptable level. If acceptable performance is not restored, the matter will be escalated to the *Director of Finance* to take appropriate action to reduce risk to the City.

4.3 Exclusion of *Vendors*

The City may, in its absolute discretion, exclude a *Vendor* from participating in a procurement process or reject the submission of a *Vendor* if:

- (i) Within five years of the date of the *RFX*, the *Vendor*, or any officer or director of the *Vendor* is or has been engaged either directly or indirectly through another legal entity in a legal action against the City, its elected or *Appointed Officers* and employees in relation to:
 - (a) Any other agreement and or contract for works or services; or
 - (b) Any matter arising from the City's exercise of its powers, duties or functions under the Local Government Act, Community Charter or another enactment.
- (i) A *Vendor* has failed to declare a potential conflict of interest when responding to a procurement request.
- (ii) A *Vendor* has failed to honor a contract in the past.
- (iii) A *Vendor* has failed to meet performance requirements as per the City's *Vendor Management* program.

5. Contract Management

- 5.1 All contracts, tender documents, addenda and amendments to tender documents, notices of awards, bonds, letters of credit, notices of intent to contract, change order, purchase orders, renewals, extensions, and any other forms of commitment and contracts will be on terms and conditions approved by the City's legal counsel. Any material deviation from the approved terms and conditions of any document requires the prior approval of the City's legal counsel.

The concurrence of the City's legal counsel is required on any contract which is unique or deviates from the terms and conditions previously approved by the City's legal counsel.

- 5.2 All City issued contracts must be endorsed by the *Vendor* prior to being endorsed by the City.

- 5.3 Overall management of rental and lease agreements for equipment is the responsibility of the Manager, Purchasing and Stores. All rent to purchase agreements shall be established per the *Competitive Bid Process*. The following are examples of items that would use rent to purchase agreements:

- 5.3.1 Construction machinery and equipment (tractors, compressors, backhoes, cranes, etc.);
- 5.3.2 Cars and trucks; and,
- 5.3.3 Other miscellaneous items such as vending machines, etc.

- 5.4 Purchasing and Stores will maintain all records and relevant supporting documents for purchase contracts in accordance with the City's *Records Management Policy*.

- 5.5 City Department staff are responsible for providing *Purchasing and Stores* any contract related documentations, including change documentation, in a timely manner, to enable contract changes to be prepared appropriately for any change in work.

- 5.6 Contract durations shall be limited to a maximum of five years unless otherwise approved by the *Director of Finance*.

6. Sustainable Procurement

The City will consider sustainability in its procurement processes, measure its progress, and strive for continuous improvement by adhering to the Sustainable Procurement Policy.

7. Compliance Obligations

- 7.1 All employees and volunteers are expected to conduct themselves with personal integrity, ethics, honesty and diligence when acquiring Goods & Services on behalf of the City and must comply with the City HR. 4.1, Code of Conduct Policy as amended.
- 7.2 All procurement shall be in accordance with all applicable legislation and trade agreements.

8. Non-Compliance

All incidents of Non-Compliance shall be documented and reported to the *Director of Finance*.

9. Confidentiality

Comply with the City HR. 4.1, *Code of Conduct Policy* as amended and the *BC Freedom of Information and Protection of Privacy Act*.

10. Prohibitions

- 10.1 The following activities are prohibited under this Policy:
 - 10.1.1 The dividing of contracts or purchases to avoid the *Standard Operating Procedure* requirements or trade agreement thresholds.
 - 10.1.2 Committing the City to contract without the appropriate level of authority to do so.
 - 10.1.3 Purchasing of any *Goods & Services* for personal use by:
 - (i) any member of *City Council*, or by any person on their behalf;
 - (ii) *Appointed Officers*; and,
 - (iii) employees of the City or their immediate families, that could result in a perceived conflict of interest unless that conflict has been disclosed, acknowledged and approved by the *Chief Administrative Officer* in the case of City employees and by *Council* in the case of *Council* members and *Appointed Officers*.
 - 10.1.4 No Contract shall be entered into, and no expenditure shall be authorized or incurred unless *Council* has provided funds for such purpose in the annual budget or otherwise agreed to the provision of such funds and, no expenditure shall be authorized or incurred for more than the funds provided.
 - 10.1.5 No *Goods & Services* shall be purchased from an officer or employee of the City, or from any immediate relative or associate of such officer or employee, unless the extent of the interest of such officer or employee has been fully disclosed and the purchase has been approved by the *Chief Administrative Officer*.

- 10.1.6 No officer or employee of the City shall be permitted to purchase any Personal or Real Property which has been declared *Surplus Goods* by the City unless obtained through a public process.
- 10.1.7 No employee or *Council* member shall purchase, on behalf of the City, any Goods, Services or Construction, except in accordance with this Policy.
- 10.1.8 No employee or *Council* member shall utilize City assets, contracts, processes or policies to procure *Goods & Services* for personal advantage, except for supplier offered employee discount programs or any goods or services procured, on behalf of the City specifically for employee wellness or other human resource initiatives.
- 10.1.9 No employee or *Council* member shall use Personal Property for personal advantage, except where such Personal Property is offered through City programs open to the public.
- 10.1.10 Where an applicable national or international trade agreement conflicts with this Policy, the trade agreement shall take precedence.

11. Construction and Performance Security and Statutory Holdbacks

- 11.1 The City may, in its absolute discretion, require a *Vendor* to provide security for the vendors' performance of construction-related services.
- 11.2 The City is required to comply with the *Builders' Lien Act*.

12. Disposal of Surplus Goods (Except Lands)

- 12.1 The *Manager, Purchasing and Stores* shall have authority to dispose of *Surplus Goods*.
- 12.2 The methods of disposal of *Surplus Goods* shall be by whatever method is determined to be most beneficial for the City and appropriate for the goods to be disposed of.
- 12.3 Employees are not permitted to receive *Surplus Goods*, and such goods may not be purchased by employees directly from the City, unless the sale for such goods is being conducted through a third-party auction.

13. Reporting

- 13.1 On a quarterly basis, *Council* will be provided with an information report summarizing the following:
 - 13.1.1 Sole source and single source purchases between \$25,000 and \$200,000;
 - 13.1.2 Award of all purchases in excess of \$250,000; and,
 - 13.1.3 Instances of Non-Compliance and action taken in each instance.

14. Other

- 14.1 Best value for purchases of *Goods & Services* will be determined based on the evaluation criteria set out in the applicable procurement process document(s). In the absence of

evaluation criteria, preference shall be given to the lowest priced submission, having regard for nuanced costs that may impact the lowest price.

- 14.2 The City may, on occasion, contract for the development of specifications to be used for the procurement of *Goods & Services*. 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.
- 14.3 All *Vendors* providing *Services* on City property will be required to provide insurance in amounts as specified in the contract between the City and the *Vendor* for such works, or at the discretion of the City if no such amounts are specified, with the City named as additional insured.
- 14.4 The City, at its discretion, will cooperate with other public agencies to purchase jointly where efficiencies may be gained.
- 14.5 City procurement documents will include relevant language from collective agreements pertaining to the provision of any municipal service, function or construction.

REVIEW AND APPROVAL:

This Policy shall be reviewed in 3 years from its effective date to determine its effectiveness and appropriateness. This Policy may be assessed before that time as necessary to reflect organizational change.

Date:

201X-XXX-XX

Approved by:

CAO/Department Head/ Council

1. Amendment Date:

Approved by: