

City of Brampton Limited Tendering Audit – Audit Report
Private & Confidential

Audit Name	City of Brampton, Limited Tendering Audit		
Sponsor(s)	Diane Oliveira, Manager, Purchasing /Deputy Purchasing Agent (PA)		
Business Unit	Purchasing	Date Issued	January 25, 2024

1.0 Executive Summary

Audit Rating: Processes surrounding Limited Tendering activities were rated as “Improvement Required” (see **Appendix 4** for the criteria for audit report rating)

Our audit of the Q2 2023 Limited Tendering activities noted the following strengths:

- Adherence to Purchasing By-law 19-2018, specifically Schedule B regarding award authority in limited tendering procurements
- Implementation of a central depository for organizing and maintaining all contract-related documents
- Reporting regularly to the Council on limited tendering procurements to support governance and oversight and to comply with the Purchasing By-law requirement
- Management and oversight of purchasing activities led by experienced and knowledgeable staff

Internal Audit discussed the following improvement opportunities with Management:

- Conflict of interest disclosure is not mandated in limited tendering
- Lack of a robust verification process for limited tendering justifications

City of Brampton Limited Tendering Audit – Audit Report
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Our review of the City's Q2 2023 procurement activities noted that staff adhered to the requirements for limited tendering under the current Purchasing By-law. Specifically, each limited tendering contract is accompanied by:

- A written justification for the use of limited tendering or a written explanation for the extension of services through limited tendering
- Financial comments confirming the availability of sufficient funding for these contracts
- Documented approval from the buying department and Purchasing that is consistent with the current award authority outlined in the Purchasing By-law

We also identified the following improvement opportunities in the City's limited tendering procurement process, specifically:

- **Lack of a conflict of interest risk consideration and disclosure** (detailed in Finding #1): The City's competitive procurement processes mandate a conflict of interest disclosure. However, this requirement has not been applied to limited tendering. As a result, limited tendering procurements were not subject to conflict of interest considerations, leading to potential oversight in managing the relevant risks.
- **Lack of a robust verification process for limited tendering justification** (detailed in Finding #2): Purchasing does not have formalized procedures for conducting due diligence reviews of limited tendering procurement, resulting in the lack of supporting documentation to substantiate a few limited tendering contracts.

Extending the conflict of interest declaration requirement to limited tendering and formalizing the procedures for conducting due diligence reviews of limited tendering procurement will enhance the City's limited tendering procurement process and ensure compliance with the current Purchasing By-law.

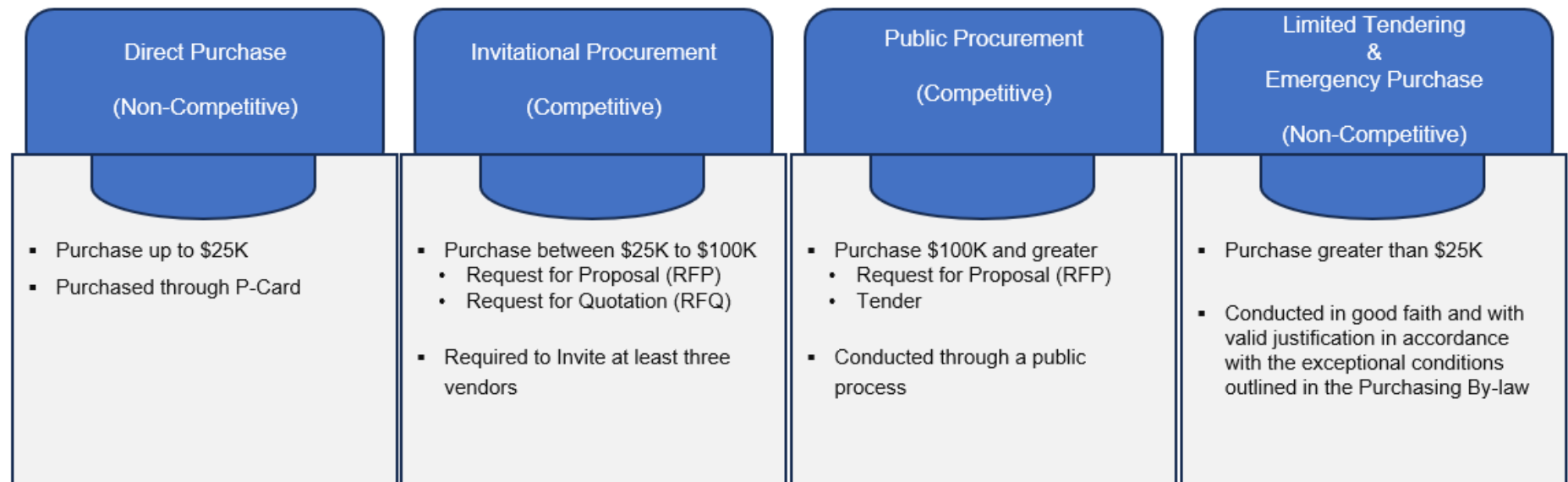
2.0 Background, Objectives, and Scope

Background

The City of Brampton's Purchasing By-law 19-2018 ("Purchasing By-Law") outlines the following key objectives:

- 1.1 Promote Procurement activities and decisions that are consistent with the strategic, financial, social, and environmental objectives of the City;*
- 1.2 Provide professional and ethical leadership through the provision of fair and transparent Procurement Processes;*
- 1.3 Promote the most cost-effective and efficient use of City funds by achieving the best value for money; and*
- 1.4 Maintain trust and confidence in the stewardship of public funds.*

The City deploys various procurement methods for goods and services, following the established guidelines of its Purchasing By-law. The graphic below provides detailed descriptions of these methods:



While the City primarily relies on competitive tendering, the Purchasing By-law permits non-competitive procurement in exceptional circumstances, allowing the City to conduct limited tendering activities by directly soliciting select vendors for goods or services. According to the By-Law:

“Limited Tendering (previously known as Single/Sole Source)” means a Procurement Process where negotiations are entered into with one or more than one Vendor based on the conditions as set out in Schedule C to this By-law and includes Direct Negotiations as a Procurement Process where there is no competitive process.

Per the Purchasing By-law, limited tendering is permissible solely in specific circumstances detailed in Schedule C, including but not limited to:

1. *If goods or services can be supplied only by a particular Vendor and no reasonable alternative or substitute goods or services exist for the following reason:*
 - a) *The protection of patents, copyrights, or other exclusive rights; or*
 - b) *Due to an absence of competition for technical reasons*
2. *For additional goods or services from the original Vendor that were not included in the initial procurement, if a change of Vendor for such additional goods or services:*
 - a) *Cannot be made for economic or technical reasons; and*
 - b) *Would cause significant inconvenience or substantial duplication or costs for the City;*
3. *The supply of goods and services is controlled by a Vendor that is a statutory monopoly;*
4.
 - a) *No bids were submitted*
 - b) *No bids conforming to the essential requirements of the procurement document were submitted;*
 - c) *No bidders satisfied the conditions for participation; or*
 - d) *The submitted bids were collusive.*

During its meeting held on September 20, 2023, the Committee of Council passed the following motion:

6.4/8.2.1

CW316-2023

“That Internal Audit be requested to review the limited tendering activities, in accordance with the Purchasing By-law, as set out in this report, and report back to Council through the Audit Committee.”

Under the Council’s directive, Internal Audit reviewed the Q2 2023 Purchasing Activity Report that included the following procurement activities:

- I. New Contracts – 57 items totalling \$95,120,396.60.
- II. Contract Extensions – 40 items totalling \$29,773,395.85.
- III. Contract Renewals – 35 items totalling \$11,910,592.84.

I. New Contracts

In Q2 2023, the City established 57 new vendor service contracts. Among these, 15 were awarded through a limited tendering process, totalling \$11.89 million. The following table details the breakdown of the quarter's \$95.12 million in new procurement activities.

Total Q2 New Limited Tendering Contracts vs. Total Q2 New Procurement Contracts				
Contract Categories	Quantity (in #s)	Quantity (in %)	New Contracts (in \$s)	New Contracts (in %)
New Limited Tendering	15	26%	\$ 11,889,019.63	12.50%
New Emergency Purchases	4	7%	\$ 324,370.57	0.34%
New Competitive Procurements	<u>38</u>	<u>67%</u>	<u>\$ 82,907,006.40</u>	<u>87.16%</u>
Total Q2 New Procurements	<u>57</u>	<u>100%</u>	<u>\$ 95,120,396.60</u>	<u>100%</u>

Of the 15 new contracts awarded through limited tendering in Q2 2023, City Council approved four contracts totalling \$9.45 million and encompass the following:

1. Design and contract administration for the new Brampton transit facility (\$7,095,818) – approved by Council on April 6, 2022
2. Design and contract administration and commissioning of Civic Centre security operation relocation (\$198,900) – Approved by Council on March 1, 2023
3. Civic Centre security operations and command centre relocation (\$1,715,000) - Approved by Council on March 1, 2023
4. CCTV security video wall and security equipment at Bramalea Civic Centre security operations centre (\$438,574.79) - Approved by Council on March 1, 2023

We focused on assessing the compliance of the remaining 11 new limited tenders, totalling \$2.44 million, with the Purchasing By-law requirements.

The table below provides a breakdown of the new limited tendering activities for Q2 2023:

Contract Categories	Approval Status	New Contracts (in #s)	New Contracts (in \$s)	New Contracts (in %)
Q2 New Limited Tendering Activities	With Council Approval	4	\$ 9,448,292.79	79%
	Without Council Approval	<u>11</u>	<u>\$ 2,440,726.84</u>	<u>21%</u>
Total Q2 New Limited Tendering Activities		<u>15</u>	<u>\$ 11,889,019.63</u>	<u>100%</u>

II. Contract Extensions

For Q2 2023, the City's procurement activities encompassed \$29.77 million in contract extensions. This includes five contracts that were initially awarded through a limited tendering process. Our review will focus on these extensions valued at \$8.20 million. Refer to the following table for a detailed breakdown:

Total Q2 Limited Tendering Contract Extensions vs. Total Q2 Contract Extensions					
Contract Categories	Original Contracts	Quantity (in #s)	Quantity (in %)	Extensions (in \$s)	Extensions (in %)
Q2 Contract Extensions	Limited Tendering	5	13%	\$ 8,203,448.00	28%
	Other Procurements (e.g., Competitive & Emergency Purchases)	<u>35</u>	<u>87%</u>	<u>\$ 21,569,947.85</u>	<u>72%</u>
Total Q2 Procurement Extensions		<u>40</u>	<u>100%</u>	<u>\$ 29,773,395.85</u>	<u>100%</u>

III. Contract Renewals

In Q2 2023, the City renewed 35 contracts. Unlike contract extensions, these renewals are planned expenditures in the original agreements, whether acquired through competitive procurement or limited tendering. As such, these renewals are not the focus of this review. The table below provides a summary of contract renewals for Q2 2023:

Total Q2 Limited Tendering Contract Renewals vs. Total Contract Renewals					
Contract Categories	Original Contracts	Quantity (in #s)	Quantity (in %)	Renewals (in \$s)	Renewals (in %)
Q2 Contract Renewals	Limited Tendering	9	26%	\$ 1,292,191.68	11%
	Competitive Procurements	<u>26</u>	<u>74%</u>	<u>\$ 10,618,401.16</u>	<u>89%</u>
Total Q2 Procurement Renewals		<u>35</u>	<u>100%</u>	<u>\$ 11,910,592.84</u>	<u>100%</u>

A Recap of Our Audit Focus

Overall, the new contracts established through limited tendering activities, extensions, and renewals, totalling \$ 21.38 million, accounted for 16% of the City's total procurement values for Q2 2023. Our audit will focus on the 11 new limited tendering activities without the Council's approval and the five extensions that were procured via a limited tendering process in this period, which are valued at \$10.64 million and represent 8% of the Q2 total procurement expenditure. Refer to the table below for an overview of Q2 2023 procurement activities.

Q2 2023 Procurement Overview				
Contract Categories		Procurement (in #s)	Procurement (in \$s)	Procurement (in %)
Limited Tendering Activities	New Contracts - With Council Approval	4	\$ 9,448,292.79	7%
	New Contracts - Without Council Approval	11	\$ 2,440,726.84	2%
	Contract Extensions	5	\$ 8,203,448.00	6%
	Contract Renewals	<u>9</u>	\$ 1,292,191.68	1%
	Total Limited Tendering Activities	29	\$ 21,384,659.31	16%
Competitive Procurement & Emergency Purchases	New Contracts	42	\$ 83,231,376.97	61%
	Contract Extensions	35	\$ 21,569,947.85	16%
	Contract Renewals	<u>26</u>	<u>\$ 10,618,401.16</u>	<u>7%</u>
	Total Competitive Procurements & Emergency Purchases	103	\$ 115,419,725.98	84%
Total Procurement - Q2 2023		<u>132</u>	<u>\$ 136,804,385.29</u>	<u>100%</u>

The newly initiated limited tendering activities and limited tendering extensions, valued at \$10.64 million, represent 8% of the total procurement expenditures for Q2 2023.

Objectives

The purpose of this engagement is for Internal Audit to evaluate the City's purchasing activities in Q2 2023, assessing whether the newly initiated limited tendering activities and limited tendering activities extension were justified and comply with the City's existing Purchasing By-law.

Scope

This audit reviewed the City's limited tendering activities conducted in Q2 2023, including both new limited tendering and their extensions. We also assessed if staff have met the requirements of the existing Purchasing By-law to ensure fair and transparent procurement processes, provide value for money, and uphold trust and confidence in the management of public funds. Internal Audit noted that the Purchasing By-law may be undergoing revisions following the recommendations from our Limited Tendering Audit completed in 2022; however, for this audit, City Council requested us to evaluate the Q2 2023 procurement activities against the existing Purchase By-Law requirements.

Out of Audit Scope

The scope of this audit does not include the following:

- Emergency Purchases
- P-Card
- Invitational and Public Procurements (Competitive Procurements)
- Purchasing By-Law (already covered in the 2022 Limited Tendering Audit)

Please note that the audit scope does not preclude us from looking at anything else that comes to our attention during the review.

3.0 Detailed Audit Findings, Recommendations, and Proposed Management Actions

Ref #	Findings	Rating	Recommendations	Management Action Plan, Responsible Person(s) and Due Date
1	<p>Lack of Conflict-of-Interest Risk Consideration and Disclosure</p> <p>According to Section 10.0 of the City's Purchasing By-law 19-2018, it's mandatory for all bidders participating in a competitive procurement process to disclose any actual, potential, or perceived conflicts of interest in writing.</p> <p>However, in the City's current procurement process, the requirement for disclosing conflicts of interest is not extended to limited tendering activities and their extensions. This may heighten the inherent risk in limited tendering procurement, as it might allow certain suppliers to gain an unfair competitive advantage and exclusive access to City contracts due to a lack of transparency and impartial assessment in the procurement process. Specifically, the following risk control measures were not enforced when the limited tendering procurement method was used:</p> <ul style="list-style-type: none"> • Submission of a conflict of interest declaration by the bidder(s) • Conflict of interest declaration by City staff participating in the purchasing decision 	P2	<p>1. City Council request that the Chief Administrative Officer ensure that the requirement for disclosing conflicts of interest by both bidders and City staff participating in the purchasing decision is extended to limited tendering procurement and their extensions by April 2024.</p>	<p>Purchasing Management agrees with the recommendation and will incorporate a conflict of interest declaration for all limited tendering procurements by April 2024.</p> <p>The requirement to declare any conflicts of interest applies to both bidders and City staff involved in the decision-making process for limited tendering.</p>

Ref #	Findings	Rating	Recommendations	Management Action Plan, Responsible Person(s) and Due Date
	<p><u>Potential Impact</u></p> <p>For the City to adhere to procurement principles, such as integrity, fairness, and transparency, it's essential to identify and manage the actual, potential or perceived conflict of interest.</p> <p>Where an actual, potential or perceived conflict of interest is not identified, or is identified but not appropriately managed, it can:</p> <ul style="list-style-type: none"> • Compromise decision-making • Undermine the integrity and reliability of the procurement process and result • Lead to challenges of the award decision and dispute which causes delays and additional costs • Disrupt the selection process and result in an unsuccessful procurement • Result in a mis-procurement being declared • Impact the City's reputation and erode public trust 			
2	<p>Lack of a robust verification process for limited tendering justification</p> <p>While Section 8.4 of the Purchasing By-law mandates that buying departments provide justifications following the criteria specified in Schedule C, Purchasing has the responsibility to conduct due diligence review and verify that the justifications provided by buying departments are substantiated.</p>	P2	<p>2. City Council request that the Chief Administrative Officer to take steps to ensure that limited tendering purchases are justified and that such steps to include but not be limited to the following:</p> <p>a) The City develops policies and procedures requiring buying departments to include justification for limited</p>	<p>Purchasing Management agrees with the recommendation. An SOP outlining the limited tendering process, appropriate supporting documentation and due diligence review will allow clarity and consistency for buying departments and Purchasing staff. The target date for completion of the SOP is Q2 2024. Appropriate training will be provided to staff upon completion of the SOP.</p>

Ref #	Findings	Rating	Recommendations	Management Action Plan, Responsible Person(s) and Due Date
	<p>Our review showed that there is a need for Purchasing staff to implement a more robust due diligence review process to ensure staff who review the limited tendering justifications follow consistent process and request and retain key documents that substantiate the justifications. A critical part of this process is developing a Standard Operating Procedure (SOP) that outlines the steps Purchasing staff should take to verify whether buying departments' justifications comply with the By-laws, document their due diligence review, and retain key documents that substantiate the justifications.</p> <p>Purchasing utilizes the "Limited Tendering Standard Form" and a 'Limited Tendering (LT) Checklist – Client Driven Pricing (All Values over \$25K)' to specify the essential information and administrative tasks necessary for awarding a limited tendering contract. For detailed examples, refer to Appendix 2 (Limited Tendering Standard Form) and Appendix 3 (Limited Tendering (LT) Checklist)). Internal Audit identified that some justifications provided by the buying departments did not include the necessary documents to demonstrate compliance with the By-law, and these cases were not followed up by Purchasing staff.</p> <p>In our review of the 16 files of limited tendering procurement, including 11 new contracts and 5 contract extensions, Internal Audit noted the files for the following 4 contracts missing key supporting</p>		<p>tendering purchases with detailed supporting documents</p> <p>b) Staff provide training and education on the newly formed policies and procedures</p> <p>c) Purchasing staff verify the justification and ensure that it is consistently followed by buying departments</p>	<p>The newly developed SOP will be updated to incorporate the automation of the limited tendering process, which is targeted for completion by Q1 2025.</p>

Ref #	Findings	Rating	Recommendations	Management Action Plan, Responsible Person(s) and Due Date
	<p>documents to substantiate the justifications provided by buying departments.</p> <ul style="list-style-type: none"> For LT2023-039 and LT2023-089, Purchasing did not confirm vendor exclusivity and relied solely on buying departments' written confirmation without reviewing supporting documents. For LT2023-184, the buying department's justification for the sole-source procurement of structural leather boots was based on an outdated vendor confirmation letter that was dated 2021. For LT2023-174, an incorrect exclusive letter from the vendor, confusing E-One fire vehicles and equipment with F-500 Encapsulating Foam, was reviewed and relied on to make the limited tendering decision. <p><u>Potential Impact</u></p> <p>Lack of a robust due diligence process renders the verification process ineffective and can result in the City procuring through limited tendering when a competitive procurement is more appropriate.</p> <p>Lack of a robust due diligence process has certainly resulted in some limited tendering procurement files lack key documents to substantiate the justifications provided by the buying departments.</p>			

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