



Limited Tendering Audit

February 6, 2024





Why are We Conducting this Audit?

Direction

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

6.4/8.2.1

CW316-2023

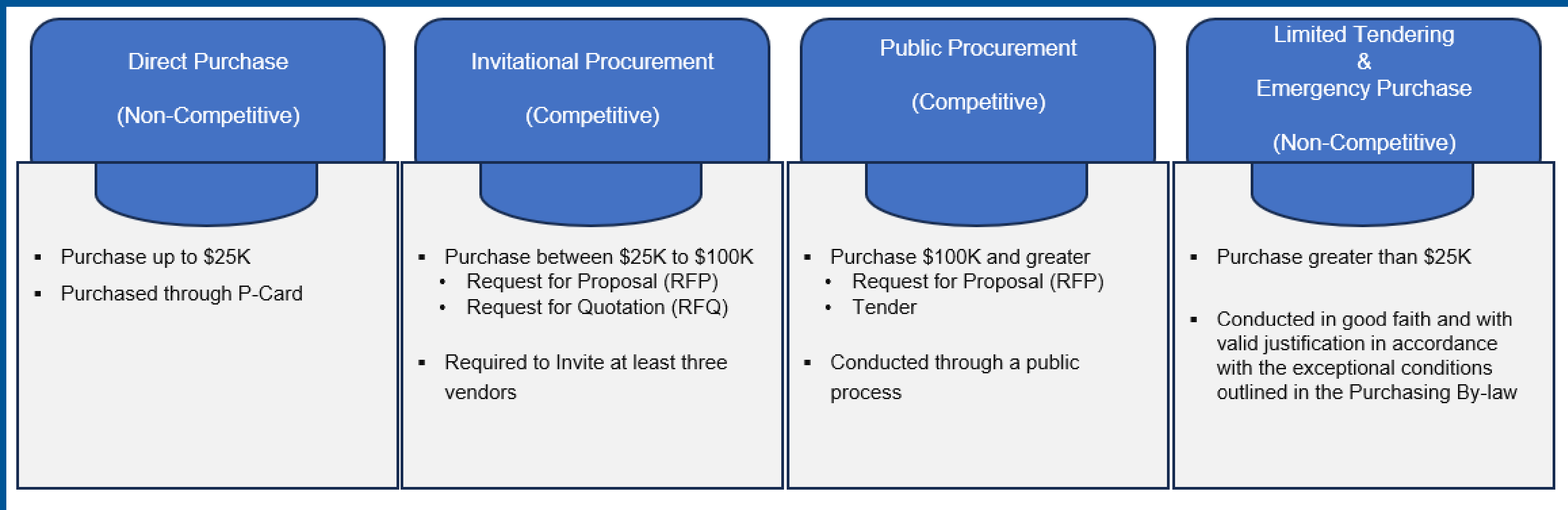
“That Internal Audit be requested to review the limited tendering activities, in accordance with the Purchasing By-law, as set out in this report, and report back to Council through the Audit Committee.”

Definition

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 of the Purchasing By-law and includes Direct Negotiations as a Procurement Process where there is no competitive process.

Background

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.





Justifications for Limited Tendering

Under the provisions of 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, such as Patents or copyrights;
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 cannot be made for economic or technical reasons;
3. The supply of goods and services is controlled by a Vendor that is a statutory monopoly;
4. No bids were submitted or conforming to the essential requirement of the procurement document were submitted.



Limited
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City's Q2 2023 Procurement Activities

Total New Contracts

The City's Q2 2023 procurement activities consist of:

New Contracts	57 items	\$95,120,397
Contract Extensions	40 items	\$29,773,396
Contract Renewals	35 items	\$11,910,593
Total	132	\$136,804,386

Q2 2023 New Limited Tendering Contracts

Total New Contracts

Table 1 shows the Q2 2023 new procurement activities by procurement types.

Details

Of the 15 new contracts awarded through limited tendering in Q2 2023, the Council has approved four contracts totalling \$9.45 million.

Our focus is on assessing the compliance of the remaining 11 new limited tenderings, totaling \$2.44 million, with the Purchasing By-law requirements.

Table 2 separates limited tendering activities with specific Council approvals from those without.

Table 1

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	38	67%	\$ 82,907,006.40	87.16%
Total Q2 New Procurements	57	100%	\$ 95,120,396.60	100%

Table 2

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	11	\$ 2,440,726.84	21%
Total Q2 New Limited Tendering Activities		15	\$ 11,889,019.63	100%

Q2 2023 Limited Tendering Contract Extensions

Contract Extensions

For Q2 2023, the City's procurement activities included 5 limited tendering contract extensions valued at \$8.20 million. The following table provides 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>

Q2 2023 Contract Renewals

Renewals

The City also renewed 35 contracts in Q2 2023, including 9 renewals to limited tendering. These renewals, unlike contract extensions, are planned expenditures included in the original contracts, whether they were acquired through competitive procurement or limited tendering. As such, these renewals to the Limited Tendering activities, undertaken in the prior periods, 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>

Audit Focus Recap

Our audit focused on the **11 new contracts without the Council's approval** and **5 contract extensions** that were procured via a limited tendering process in Q2 2023.

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	9	\$ 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	26	\$ 10,618,401.16	8%
	Total Competitive Procurements & Emergency Purchases	103	\$ 115,419,725.98	84%
Total Procurement - Q2 2023		132	\$ 136,804,385.29	100%

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

Audit Objectives and Scope

Audit 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 extensions were justified and comply with the City's existing Purchasing By-law.

Scope

2022 Limited Tendering Audit	Internal Audit conducted a Limited Tendering audit in 2022. The audit identified areas of improvement in the Purchasing By-law itself, reporting limited tendering activities to the Council, and the approval process surrounding extensions to limited tendering activities.
2023 Limited Tendering Review - Council Request	Internal Audit noted that the Purchasing By-law may be undergoing revisions following the 2022 Limited Tendering Audit recommendations. However, for this audit, City Council requested us to evaluate the Q2 2023 procurement activities against the existing Purchase By-law requirements, with a focus on limited tendering activities.
2023 Limited Tendering Review Focus	Specifically, we reviewed the 11 new limited tendering procurements and the 5 extensions conducted in Q2 2023 to verify whether they met the requirements of the existing Purchasing By-law.

Executive Summary

Our review of the City's Q2 2023 limited tendering activities identified the following strengths:

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

Also, we have noted two areas of improvement:

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

Finding #1: Lack of Conflict of Interest (COI) Risk Consideration

Condition

According to the Purchasing By-law 19-2018, all bidders participating in a competitive procurement process must disclose any actual, potential, or perceived COI in writing.

However, under the current practice, the requirement for disclosing COI does not apply to limited tendering. Specifically, the following risk control measures have not been enforced:

- Submission of a COI declaration by the bidder(s)
- COI declaration by City staff who participate in the purchasing decision.

Impact

Where an actual, potential or perceived conflict of interest is not identified, or is identified but not appropriately managed, it can:

- Compromise decision-making
- Undermine the integrity and reliability of the procurement process and result
- Lead to challenges to 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.

Finding #2: Lack of Robust Verification Process for Limited Tendering Justification

Condition

Purchasing By-law mandates that buying departments provide justification for limited tendering. Purchasing staff are responsible for verifying the justifications before approving these limited tendering activities.

Internal Audit staff noted that 4 out of the 16 limited tendering procurements we reviewed did not include the necessary documents to substantiate the justifications of the limited tendering.

Ref #	LT Contract	Audit Finding
1	LT2023-039 (\$135,729)	Purchasing did not confirm vendor exclusivity and relied solely on buyer departments' written confirmation without reviewing supporting documents.
2	LT2023-089 (\$333,316)	Purchasing did not confirm vendor exclusivity and relied solely on buyer departments' written confirmation without reviewing supporting documents.
3	LT2023-184 (\$250,000)	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.
4	LT2023-174 (\$180,000)	An incorrect exclusive letter from the vendor, confusing two different goods, was reviewed and relied on to make the limited tendering decision.



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Finding #2: Lack of Robust Verification Process for Limited Tendering Justification (Cont'd)

Impact

Lack of a robust due diligence process renders the verification ineffective and can result in the City procuring through limited tendering when a competitive procurement is more appropriate.

Lack of a robust due diligence process has resulted in some limited tendering procurement files lacking key documents to substantiate the justifications provided by the buying departments.

How Will the Audit Benefit the City?

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.



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Thank You



BRAMPTON