

**Date:** 2021-06-01

**Subject:** Report on Council Intimation of Purchasing Contract Extensions and Renewals (\$200,000 or greater, or if equal or greater value than the original contract)

**Contact:** Gina Rebancos, Director, Purchasing  
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**Report Number:** Corporate Support Services-2021-703

**Recommendations:**

1. That the report titled **Report on Council Intimation of Purchasing Contract Extensions and Renewals (\$200,000 or greater, or if equal or greater value than the original contract)**, to the Committee of Council meeting of June 9, 2021 be received.

**Overview:**

- At the December 9, 2020 Council meeting, Council approved the following motion:

*That staff be directed to report back on the potential for future contract extensions and renewals, of a value greater than \$200,000 or if the extension of a contract is of equal or greater value than the original contract, to be brought forward to Council for information prior to contract extension/renewal execution.*

- This report provides information on the contract extension and renewal processes and the impacts of the above proposal.
- Staff do not recommend changing current practices and reporting requirements; however, language is included in the report should Council wish to receive additional information, for Council's consideration.

**Background:**

In 2016, the Ontario Ombudsman conducted a systemic review of the City's procurement practices, focusing on the administration of its purchasing by-law, policies and procedures regarding non-competitive procurements. The review did not reveal any maladministration, as noted in the final report issued March 2017. Although no maladministration was revealed, the Ombudsman proposed several best practices.

In 2017, three trade agreements, the Canadian Free Trade Agreement (CFTA) between the Canadian federal government and Canadian provinces and territories, the Comprehensive Economic Trade Agreement (CETA) between the Canadian federal government and the European Union and the Ontario-Quebec Trade and Cooperation Agreement (OQTCA) all include government procurement obligations that extend to municipal government agencies. The intent of the procurement sections of the trade agreements is to ensure that public procurements are conducted in a fair, open, transparent and non-discriminatory manner.

In March 2018, the City's current Purchasing By-law came into effect. The By-law was developed with a focus on compliance with the City's obligations under relevant trade agreements, addressing the Provincial Ombudsman's recommendations and supporting modernization of the City's procurement processes.

In addition to the above considerations, the By-law aligns with recommendations from Justice Bellamy's report from the "*Toronto Computer Leasing Inquiry*" which contained recommendations aimed at improving practices in procurement, the general principles of which are applicable to the Councils and staff of municipalities, including Council's role in procurement as follows:

- *City Council should establish fair, transparent, and objective procurement processes. These processes should be structured so that they are and clearly appear to be completely free of political influence or interference.*
- *Councillors should separate themselves from the procurement process. They should have no involvement whatsoever in specific procurements. They have the strongest ethical obligation to refrain from seeking to be involved in any way.*

As a result, City Council has been engaged at the outset of the procurement process with the approval of procurements estimated at \$1,000,000 or greater and procurements less than \$1,000,000 that are deemed to be of significant risk, involve security concerns or significant community interest. This approval process has been in place since 2012 with enhanced reporting of procurement activities to Council.

On December 9, 2020, Council directed staff to report back on the potential for future contract extensions and renewals, of a value greater than \$200,000 or if the extension of a contract is of equal or greater value than the original contract, to be brought forward to Council for information prior to contract extension/renewal execution.

In response to the motion and other Council inquiries related to procurement, staff conducted a workshop for Council on February 22, 2021 – Procurement Practices - An Overview, to inform Council of procurement practices at the City, roles and responsibilities, processes, and the impacts of this proposal.

Subsequently at the March 3, 2021 meeting, Council approved the following recommendation from the Governance and Council Operations Committee:

*That staff provide the quarterly Purchasing Activity Report so that it includes supplementary information in the form of a brief executive summary for each item so as to allow Members of the Public and Council to have a brief description of each item listed within the report.*

#### **Current Situation:**

Amendments to contracts are reviewed, approved and processed by Purchasing through Contract Extension or Contract Renewal requests submitted by the applicable departments.

A Contract Extension is an amendment to a contract where the terms of the contract do not include the option for such amendment, for example an increase in contract value, change in scope, or extension of time. Contract Extension requests are prepared by the respective departments with a detailed explanation of the extension, for Purchasing's review and approval. Staff exercise caution and due diligence to ensure that a Contract Extension is not in fact a new requirement that should be competitively procured. Approval is obtained in accordance with the Purchasing By-law and the Delegation of Department Head Purchasing Authority Administrative Directive. Contract Extensions with a cumulative value of \$1M and greater requires CAO approval in addition to Department Head. If a budget amendment is required to process a Contract Extension, a report is prepared for Council's approval.

A Contract Renewal is an amendment where the option to renew is included in the original procurement documents and the terms of the contract, and approval is obtained at the time of original contract award. The option to renew a contract is part of the bid price so it is tested against the market and gives the City maximum flexibility. Having an optional renewal in the contract is a benefit to both the City and the vendor. For the City, benefits

include predictable cost, known performance, saves on-boarding time, and optimizes resources associated with complex procurements. Vendors are incentivized to submit competitive pricing and perform well understanding that these factors will be considered in the City's decision to renew a contract. The exercising of a Contract Renewal is at the Operating Department's discretion but is subject to agreement by the vendor. Departments and Purchasing work together to determine if the renewal of a contract is in the City's best interest, taking into consideration past performance by the vendor, market conditions, price fluctuations, operational impacts and any other factors that may be relevant to the specific contract or requirement.

Contract Extensions and Renewals with a cumulative value greater than \$100,000 are currently reported to Council as part of the Purchasing Activity Quarterly Report and, going forward, supplementary information that further describes these activities will be included as per Council's direction.

The table below summarizes the procurement practices at the Region of Peel and City of Mississauga. This reflects a high-level general summary of common practices and is important to note that each of their by-laws set out specific exceptions to some of these processes. Peel and Mississauga Councils approve direct negotiations \$100k and greater, where Brampton Council approves these procurements at \$1M and greater. For new competitive procurements, Brampton Council is involved in the approval of the commencement of procurements valued at \$1M and greater, with no council involvement at Peel and Mississauga. All three agencies are aligned in the process for contract renewals and some level of reporting to Council of procurement activities.

	<b>Region of Peel</b>	<b>City of Mississauga</b>	<b>City of Brampton</b>
<b>Limited Tendering / Direct Negotiations</b>	>\$100k requires Council approval	>\$100k requires Council approval	\$1M and greater requires Council approval to proceed with procurement
<b>New Procurements</b>	No Council Approval (exception noted above)	No Council Approval (exception noted above)	\$1M and greater requires Council approval to proceed with procurement
<b>Contract Extensions</b>	Council approval for: <ul style="list-style-type: none"> <li>Greater than 20% of the total contract price and greater than \$100k (exceptions included in By-law)</li> </ul>	Council approval for: <ul style="list-style-type: none"> <li>Greater than 20% of the original value and greater than \$100k or,</li> <li>Over \$1M (exceptions included in By-law)</li> </ul>	No Council Approval
<b>Contract Renewals</b>	Renewal options included in original procurement documents and award reports.  No Council approval required.	Renewal options included in original procurement documents and award reports.  No Council approval required.	Renewal options included in original procurement documents and award reports.  No Council approval required.

	<b>Region of Peel</b>	<b>City of Mississauga</b>	<b>City of Brampton</b>
<b>Procurement Reporting to Council</b>	Tri-annual reporting of contract awards greater than \$100k. Contract increases related to unforeseen circumstances and final contract payments are reported. Contract renewals are not reported.	Monthly reporting of contract awards, extensions and renewals greater than \$100k.	Quarterly reporting of contract awards, extensions, and renewals \$100k and greater.

Council's role as set out in the current Purchasing By-law aims to avoid the potential pitfalls of politicization of procurement decisions, accusations of bias in procurement decision making, lack of clarity regarding roles, responsibilities and accountabilities and harm to the City's procurement reputation.

Staff recommend the current reporting requirements remain unchanged as supported in this report. The Purchasing By-law provides comprehensive reporting to Council to support its oversight and fiduciary responsibilities relating to the City's procurement activities, ensuring procurement practices and procedures reflect and allow for fair, open and transparent processes.

If Council wishes to receive additional information, the following recommendation could be adopted:

That staff provide the quarterly Purchasing Activity Report so that it includes a summary of contracts with a value of \$100,000 and greater with upcoming renewal options, prior to contract renewal execution.

### **Corporate Implications:**

Council's proposal to receive contract extension and renewal requests for information as noted in the December 9, 2020 motion, prior to execution, could lead to operational and financial impacts as outlined below.

#### *Resource Intensive*

- Increased number of reports for Council review and consideration. Referencing the last two years' purchasing activity as a baseline, it will result in at least 200 additional reports each year.
- Staff time and resources from various City divisions to prepare increased number of reports to Council with each report taking approximately six weeks to prepare, review and seek internal approvals.

### Time Sensitivity

- Delays in approvals due to meeting scheduling, given that there are around 18 Council meetings annually, including summer, end of year recess and lame-duck period
- Impact to construction schedules relating to prime summer season, in-stream works, winter shut down, etc.
- Long lead times for complex procurements requiring resources to be re-allocated

### Pricing and Other Contractual Impacts

- Delays to project completion could cause externally-funded projects to be at risk
- Could temporarily stop ongoing work on-site, causing delays and impacting delivery of programs
- Disruption to delivery of essential services and goods, examples safety apparatus, transit, uniforms, etc.
- Potential deterrence of qualified vendors due to perception of City's longer processes and/or higher prices due to increased red-tape
- Increased contingency on projects to avoid excessive reports and on-site delays, resulting in increased encumbrance of funding
- Requires at least six months' notice if the recommendation to renew a contract is not approved in order for a procurement to be conducted

### **Strategic Plan:**

This report achieves the Strategic Plan goals in Good Government by achieving effective management of the City's finances through the City's procurement goals of encouraging competition, openness and transparency, fairness, objectivity, accountability, efficiency and effectiveness.

### **Terms of Council Priority:**

This report has been prepared in full consideration of the Term of Council Priority of "Brampton is a Well-Run City", demonstrating value for money of City programs and services through open, fair and transparent procurement processes.

### **Conclusion:**

Council directed staff to report back on the potential for future contract extensions and renewals be brought to Council for information prior to contract extension and renewal execution. This report outlines the potential operational and financial impacts to the City that could affect the delivery of efficient and effective services and programs to the public.

As a result, staff do not recommend changing current practices and reporting requirements; however, language is included in this report should Council wish to receive additional information. The current process adequately enables effective oversight by Council while balancing the need for controls and efficiency with the transparency and disclosure requested by Council.

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