

<b>POLICY TITLE</b> Materials Management Policy	<b>ADOPTED BY</b> City Council	<b>EFFECTIVE DATE</b> March 24, 2004
<b>ORIGIN / AUTHORITY</b> Executive Policy Committee	<b>CITY POLICY NO</b> F1-003	<b>MOST RECENT CONSOLIDATION</b> January 28, 2015

**A. Purpose:**

The City of Winnipeg Materials Management Policy provides governance of materials management functions and is founded on the following guiding principles:

- The City’s needs must be met in an effective and efficient manner.
- The taxpayers of the City are entitled to the best value for their taxes.
- All businesses are entitled to fair and ethical treatment.

**B1. Definitions:**

B1.1 Unless a different definition is prescribed for the particular provision, the words and phrases defined in this section shall have the meaning set forth below whenever they appear in this Policy:

- (a) “**Administrative Standard**” means a written standard by the Chief Administrative Officer with regard to any matter governed by this Policy, having general or particular application, or present or future effect, which is designed to implement or interpret any thing or matter governed by this Policy
- (b) “**Agreement on Internal Trade**” means the intergovernmental agreement between the federal government and the provinces and territories to reduce and eliminate barriers to free movement of people, goods, services and investments within Canada, which became effective July 1, 1995, and in particular Annex 502.4 Procurement Provisions for municipalities, which became effective April 17, 1999
- (c) “**amount**” means money, property or a service, expressed in terms of the **amount** of money or the value in terms of money of the property or service
- (d) “**appropriate Standing Committee**” means the Executive Policy Committee or the Standing Committee designated by Council in By-law 7100/97 and any amendments thereto, and any by-law in substitution therefor, to which an administrative division reports
- (e) “**Chief Administrative Officer**” means the City employee holding that office or, if applicable, the successor to the authority or responsibility of such office

- (f) “**City**” means The City of Winnipeg as continued under The City of Winnipeg Charter, Statutes of Manitoba 1989-90, c. 10, and any subsequent amendments thereto
- (g) “**consideration**” includes any amount that is payable for a supply, by contract or by operation of law
- (h) “**contractor**” means a person contracting with the City as a supplier or as a recipient
- (i) “**cooperative contract**” means a contract:
  - (i) arising through a solicitation conducted by the City which may include another public sector body or a group composed of two or more thereof; or
  - (ii) arising through a solicitation conducted by another public sector body, or a group composed of two or more thereof; which includes the City as a party to the contract or allows the City to contract under the same terms and conditions
- (j) “**Council**” means the Council of The City of Winnipeg
- (k) “**financial service**” means:
  - (i) the exchange, payment, issue, receipt or transfer of money, whether effected by the exchange of currency, by crediting or debiting accounts or otherwise
  - (ii) the operation or maintenance of a savings, chequing, deposit, loan, charge or other account
  - (iii) the lending or borrowing of a financial instrument
  - (iv) the issue, granting, allotment, acceptance, endorsement, renewal, processing, variation, transfer of ownership or repayment of a financial instrument
  - (v) the provision, variation, release or receipt of a guarantee, an acceptance or an indemnity in respect of a financial instrument
  - (vi) the payment or receipt of money as dividends (other than patronage dividends), interest, principal, benefits or any similar payment or receipt of money in respect of a financial instrument
  - (vii) the payment or receipt of an amount in full or partial satisfaction of a claim arising under an insurance policy
  - (viii) the making of any advance, the granting of any credit or the lending of money
  - (ix) the underwriting of a financial instrument
  - (x) any service provided pursuant to the terms and conditions of any agreement relating to payments of amounts for which a credit card voucher or charge card voucher has been issued
  - (xi) the service of investigating and recommending the compensation in satisfaction of a claim

- (l) “**goods**” means property that is not real property
- (m) “**money**” includes any currency, cheque, promissory note, letter of credit, draft, travellers cheque, bill of exchange, postal note, money order, postal remittance and other similar instrument, whether Canadian or foreign, but does not include currency the fair market value of which exceeds its stated value as legal tender in the country of issuance or currency that is supplied or held for its numismatic value
- (n) “**person**” means an individual, firm, partnership, association or corporation, or any combination thereof, and includes heirs, administrators, executors or legal representatives of a person
- (o) “**property**” means any property, whether real or personal, movable or immovable, tangible or intangible, corporeal or incorporeal, and includes a right or interest of any kind, a share and a chose in action, but does not include money
- (p) “**public sector body**” means a government, a non-profit organization, a charity, a municipality, a school authority, a hospital authority, a public college or a university
- (q) “**real property**” means messuages, lands and tenements of every nature and description and every estate or interest in real property, whether legal or equitable
- (r) “**recipient**” of a supply means:
  - (i) where consideration is payable for the supply, the person who is liable to pay that consideration; and
  - (ii) where no consideration is payable for the supply, in the case of a supply of property, the person to whom the property is delivered or made available or to whom possession or use of the property is given is or made available, and in the case of a supply of service, the person to whom the service is rendered
- (s) “**revenue generating contract**” means a contract where potential revenue is to be generated through the contract for payment to the City for the offer of goods or services
- (t) “**service**” means anything other than:
  - (i) property
  - (ii) money; and
  - (iii) anything that is supplied to an employer by a person who is or agrees to become an employee of the employer in the course of or in relation to the office or employment of that person
- (u) “**solicitation**” means an invitation to make an offer to the City, including without limitation invitation to tender, request for quotation, request for proposal, and invitation to negotiate

- (v) “**subcontractor**” means a person contracting with a contractor as a supplier or recipient in respect of a supply to the City or a supply by (revenue generating) the City, and includes a subcontractor’s subcontractor
- (w) “**supplier**”, in respect of a supply, means the person making the supply
- (x) “**supply**” means the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition
- (y) “**surplus supplies**” means any supplies, whether new or used, which have a remaining useful life, having regard to maintenance and other costs associated with such use, including without limitation, scrap, obsolete equipment, lost or confiscated property and equipment or machinery

## **Materials Management Policy**

### **B2. Scope of the Policy:**

- B2.1 Except as otherwise provided in clause B2.2, this Policy shall govern the following materials management activities:
  - (a) Procurement of goods, services and construction;
  - (b) transportation and distribution;
  - (c) inventory and asset management; and
  - (d) disposal of Surplus Supplies;
- B2.2 This Policy shall apply to any obligation created by contract for a supply to or by (revenue generating) the City, and the procedures preliminary thereto as provided in this Policy, but does not include:
  - (a) a supply of financial services; or
  - (b) a supply of real property; or
  - (c) a supply by the City of municipal services; or
  - (d) a contract of employment or collective agreement; or
  - (e) a contract entered into by The Board of Trustees of The Winnipeg Civic Employees’ Benefit Program (Pension Fund) or the Sinking Fund Trustees.

### **B3. Solicitation of Competitive Offers**

- B3.1 Every supply to or by (revenue generating) the City shall be initiated through the solicitation of competitive offers unless permitted by:
  - (a) Section B4 - Single Source Negotiations; or
  - (b) Section B5 - Cooperative Contracts; or
  - (c) Resolution of Council.

- B3.2 Solicitation of competitive offers may be either:
- (a) Competitive-public:
    - (i) Issued by Materials Management and advertised on the Materials Management website.
  - (b) Competitive – modified competition:
    - (i) issued by Materials Management or a department to a number of bidders with approval of the Chief Administrative Officer; and
    - (ii) not to exceed Agreement on Internal Trade thresholds; and
    - (iii) may not be used where a funding agreement requires a public bid solicitation.
- B3.3 Further to B3.2(a)(i), where all bids received for a particular Bid Opportunity are not in substantial compliance with the terms and conditions of that Bid Opportunity and the estimated contract value does not exceed \$1,000,000, the Chief Administrative Officer may determine, in the best interest of the City, that an award may be made to the Bidder who has submitted the most advantageous offer as a result of that publicly tendered Bid Opportunity with due regard to the evaluation criteria.
- B3.4 Any solicitation not in compliance with B3.2(a), B3.2(b) or B3.3, must be approved as a single source negotiation in accordance with B4 of the Policy.

#### **B4. Single Source Negotiations**

- B4.1 Subject to B8, a supply to be made to the City may be negotiated without the solicitation of competitive offers where the Chief Administrative Officer determines that, it is in the best interest of the City, appropriate/necessary, and that:
- (a) the supplier has an exclusive statutory right to make the requisite supply; or
  - (b) the supply is made by a public sector body, and the consideration is fair and reasonable; or
  - (c) the consideration for the supply is to be paid by a third party and that third party designates the supplier; or
  - (d) it is in the City's interests to protect the confidentiality of the supplier or the City; or
  - (e) the cost of solicitation of competitive offers is reasonably anticipated to exceed the benefits thereof; or
  - (f) the compatibility of a supply with existing property or services is the paramount consideration and that supply is available only from a single supplier; or
  - (g) the supply is for testing or trial use; or
  - (h) deleted by Council May 19, 2010

- (i) the supply is for interim contractual arrangements following the expiration of a contract; or
- (j) an emergency, including without limitation:
  - (i) an act of God; or
  - (ii) strikes or lock-outs; or
  - (iii) laws, by-laws, ordinances, directives, standards, codes and orders of authorities having jurisdiction, which come into force; or
  - (iv) the frustration or breach of a contract; or
  - (v) the receipt of unacceptable or uncompetitive bids;

creates an unforeseeable, immediate and serious need which jeopardizes the health or safety of any person, threatens public or private property or the environment, or adversely affects the functioning of the City, and which may not be reasonably met by any other procedure.

- B4.2 A contract for a supply to be made pursuant to B4.1 (i) and (j), shall be only for the quantity or time reasonably required to meet the immediate need.
- B4.3 A supply to be made by the City (revenue generating) may be negotiated without the solicitation of competitive offers where the Chief Administrative Officer determines that:
  - (a) it is in the City's interests to make the supply to a public sector body; or
  - (b) it is in the City's interests to make the supply as the consideration, or any part thereof, for a supply to the City; or
  - (c) the cost of disposal of property is reasonably anticipated to exceed the fair market value of the property.
- B4.4 Notwithstanding B4.1, where based on the estimated value of the contract, the supply to the City would be subject to the Agreement on Internal Trade, approval by Executive Policy Committee is required for negotiations without the solicitation of competitive offers unless those single source negotiations would be permitted in accordance with Appendix C and Appendix D of Annex 502.4 of the Agreement on Internal Trade. Appendix C and Appendix D attached.
- B4.5 Where the request for single source negotiation exceeds the thresholds of the Agreement on Internal Trade, \$250,000 for construction/\$100,000 for goods and services (other than construction), a cost/benefit analysis must accompany the request.

## **B5. Cooperative Contracts**

- B5.1 Where the Chief Administrative Officer determines that it is in the best interests of the City, a supply to or by (revenue generating) the City may be made under the terms and conditions of a cooperative contract.

## **B6. Ethics**

- B6.1 A person shall be in breach of the ethical standards of this Policy who knowingly:
- (a) employs or offers to employ a City employee, or any person on such employee's behalf; or
  - (b) retains or offers to retain a City employee, or any person on such employee's behalf, as a subcontractor; or
  - (c) gives or offers to give a City employee, or any person on such employee's behalf, any money, property or services whether present or promised which provides for an inadequate consideration; or
  - (d) solicits the disclosure of, obtains or uses confidential information in connection with a solicitation or a contract for a supply to or by (revenue generating) the City.
- B6.2 A City employee shall be in breach of the ethical standards of this Policy who:
- (a) responds to a solicitation for or contracts for a supply to or by (revenue generating) the City; or
  - (b) while an owner, partner, shareholder, director or officer of a business, allows such business to respond to a solicitation for or contract for a supply to or by (revenue generating) the City; or
  - (c) is the employee of or a subcontractor to a contractor in connection with a solicitation for or contract for a supply to or by (revenue generating) the City; or
  - (d) solicits or accepts from a person, on behalf of himself or herself or any other person:
    - (i) employment; or
    - (ii) a contract as a subcontractor; or
    - (iii) any money, property or services whether present or promised which provides for an inadequate considerationin connection with a solicitation or contract for a supply to or by (revenue generating) the City; or
  - (e) offers to disclose, discloses or uses confidential information in connection with a solicitation or contract for a supply to or by (revenue generating) the City; or
  - (f) for a supply for personal use:
    - (i) directly or indirectly uses the City; or
    - (ii) directly or indirectly uses the name of the City to solicit a discount or any other favourable terms accorded the City; or

- (iii) where his or her identity is known to a person, knowingly accepts a discount or any other favourable terms accorded the City

unless the supply is made pursuant to a contract or program authorized by the Chief Administrative Officer.

B6.2.1 A City employee shall not be deemed to be in breach of the ethical standards of this Policy by:

- (a) bidding upon or purchasing City property offered at a public sale; or
- (b) owning or purchasing publicly traded shares or bonds of a corporation which responds to a solicitation for or contracts for a supply to or by (revenue generating) the City; or
- (c) being a director, officer or employee of a public sector body which responds to a solicitation for or contracts for a supply to or by (revenue generating) the City; or
- (d) providing advice, services or public information in the due course of his or her duties as a City employee; or
- (e) accepting, in the course of his or her duties:
  - (i) the normal exchange of hospitality among persons doing business; or
  - (ii) tokens of nominal value such as pens, calendars and the like exchanged as a part of business protocol; or
  - (iii) normal presentations made to persons participating in public functions, opinion surveys, product trials, or other such activities; or
  - (iv) such other items as may be specified by the Chief Administrative Officer.

B6.2.2 The Chief Administrative Officer may waive clause B6.2 (a), (b) and (c) where he or she is satisfied that proper disclosure has been made, that the City employee will be able to perform his or her duties as a City employee without bias or favouritism, and the award, if any, will be in the best interests of the City.

B6.3 Nothing herein shall be interpreted to abridge or affect any Criminal Statute, common law or equitable principle or to repeal any other ethical code approved by the City, including the City's Employee Code of Conduct. The more stringent requirements shall apply.

## **B7. Suspension and Debarment**

B7.1 Upon reasonable notice in writing to the person involved and after a reasonable opportunity for that person to make representations in opposition to a recommendation of suspension or debarment, the Chief Administrative Officer may:

- (a) if there is probable cause to believe that the person has engaged in any activity which might reasonably lead to debarment, suspend that person for a period not exceeding six months from participating in a solicitation, acting as a contractor, or acting as a subcontractor; or
- (b) if there is sufficient cause, debar a person for a period not exceeding three years from participating in a solicitation, acting as a contractor, or acting as a subcontractor.

**B7.2 Causes of debarment include:**

- (a) conviction for a criminal offence of a person or a director or officer of such person relating to obtaining or attempting to obtain by the person of a contract or subcontract, or indicating a lack of business integrity or honesty which directly and seriously affects the responsibility of the person, or arising out of the submission of bids, proposals or other like procedures; or
- (b) serious breach of contract indicating an unwillingness or inability to perform a contract in accordance with the terms and conditions or in accordance with the specifications, or a record of unsatisfactory performance of one or more contracts in accordance with the terms and conditions thereof, or in accordance with its specifications; or
- (c) the breach of any ethical standard set out in Section B6.

**B7.2.1** The cause of debarment may, but need not, relate to a solicitation, award or performance of a City contract.

**B7.3** The Chief Administrative Officer shall issue a written decision to suspend or debar a person setting out the reasons for suspension or debarment.

**B7.3.1** The decision of the Chief Administrative Officer shall be conclusive and not subject to appeal.

**B7.3.2** The suspension or debarment shall take effect immediately upon the decision of the Chief Administrative Officer.

**B8. Authority of the Chief Administrative Officer**

**B8.1** Subject to The City of Winnipeg Charter, City by-laws and this Policy, the Chief Administrative Officer shall have authority to:

- (a) approve by Administrative Standard such guidelines, procedures and standard forms, and prescribe their use, as he or she deems advisable for the interpretation and application of this Policy
- (b) make Administrative Standards consistent with this Policy, whether or not the right to so regulate is expressly provided for herein
- (c) approve the assignment of a contract or payment therefor in such form and subject to such terms and conditions as he or she deems advisable

- (d) approve the termination of a contract, subject to such terms and conditions as he or she determines advisable, in consultation with Legal Services;
- (e) approve amendments to terms of a contract, including those set out in the General Conditions, in consultation with Legal Services
- (f) determine that a bid is non-responsive and shall be rejected
- (g) determine that it is in the best interest of the City to not make an award of contract
- (h) initiate a solicitation
- (i) approve single source negotiations in accordance with B4. where the estimated value of the contract to be negotiated does not exceed \$1,000,000, except in the case of an emergency, pursuant to B4.1 (j), which contract amount is not anticipated to exceed the dollar limits set out in B8.2
- (j) approve a Competitive – modified competition solicitation in accordance with B3.2(b)
- (k) determine which supplies are surplus supplies
- (l) determine which surplus supplies are likely to be of use to other civic departments, agencies or bodies, and to determine the notice of availability, if any, to be given and the transfer for value, if any, between City departments
- (m) delegate in writing any of his or her authority under this Policy.

B8.2 The Chief Administrative Officer shall have authority to approve and award a contract where:

- (a) the contract is for a supply to the City, where the value of the contract does not exceed \$5,000,000., and there are sufficient funds for the monetary consideration to be paid by the City in a budget therefor approved by Council; or
- (b) the contract is for a supply to the City, not exceeding five years and where the estimated value of the contract does not exceed \$5,000,000., and the contract does not create an absolute commitment for funds not yet approved by Council; or
- (c) the contract is for a supply by the City (revenue generating).

B8.2.1 In all other cases, the Chief Administrative Officer shall forward a recommendation to the appropriate Standing Committee which may approve an award of contract to be made by the Chief Administrative Officer where:

- (a) there are sufficient funds for the monetary consideration to be paid by the City in a budget therefor approved by Council; or
- (b) the Standing Committee identifies sufficient available funds in an alternative budget approved by Council to cover the difference

between the budgetary provision and the monetary consideration to be paid by the City.

- B8.2.2 The appropriate Standing Committee may approve an award of contract to be made by the Chief Administrative Officer where the Standing Committee identifies sufficient available funds in an alternative budget approved by Council to cover the difference between the budgetary provision and the monetary consideration to be paid by the City.
- B8.2.3 Where the criteria set out in clause B8.2.2 are not met, the appropriate Standing Committee shall forward a recommendation to Council including, where appropriate, a recommendation for funding the difference between the budgetary provision and the monetary consideration to be paid by the City pursuant to the proposed contract. Council may approve an award of contract to be made by the Chief Administrative Officer.
- B8.3 An award of contract made in good faith pursuant to this Policy shall be conclusive of compliance with this Policy and any authority delegated hereunder, notwithstanding any irregularities therein.

**C. Responsibilities**

- C1.1 Administrative Standards are issued by the Chief Administrative Officer.
- C1.2 Except as otherwise specified in this policy, all authority under this policy is delegated to the Chief Administrative Officer.
- C1.3 Materials Management Division manages any reviews.
- C1.4 The position responsible for the Materials Management Policy is the Manager of Materials
- C1.5 Reviews are performed on an annual basis, except where periodically required in advance of annual review.
- C1.6 Revisions are submitted to Council through a Report to the Office of the Chief Administrative Officer

**D. Appendices**

- D1.1 Appendices of Annex 502.4 of the Agreement on Internal Trade
  - (a) Appendix C attached
  - (b) Appendix D attached
- D1.2 Further information on the Agreement on Internal Trade, effective July 1, 1995, Annex 502.4, effective April 17, 1999 is available at:

<http://www.ait-aci.ca/en/ait/ait.pdf>

D1.3 Other Council policies may be applicable to this Materials Management Policy including but not limited to:

- (a) The Purchasing Policy with Respect to Sustainable Development and Environmental Issues adopted by Council on November 21, 1990 (currently under review as Sustainable Development Policy)

<http://www.winnipeg.ca/finance/findata/matmgt/policy/Sustainable%20Development%20and%20Environmental%20Issues%20Policy.pdf>

- (b) Universal Design Policy

[http://www.winnipeg.ca/ppd/planning/pdf\\_folder/EPC\\_UnivDesign.pdf](http://www.winnipeg.ca/ppd/planning/pdf_folder/EPC_UnivDesign.pdf)

- (c) City of Winnipeg Green Building Policy: New City-owned Buildings and Major Additions

## **Agreement on Internal Trade, Annex 502.4**

### **APPENDIX C**

#### **Exceptions - Circumstances for Exclusions**

The following are the exceptions for the purposes of paragraph I(1):

- (a) where an unforeseeable situation of urgency exists and the goods, services or construction cannot be obtained in time by means of open procurement procedures;
- (b) where goods or consulting 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 a contract is to be awarded under a cooperation 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 includes rules for awarding contracts that differ from the obligations set out in this Annex;
- (d) 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 use in the construction or repair of roads;
- (e) where compliance with the open tendering provisions set out in this Annex would interfere with the entities= ability to maintain security or order or to protect human, animal or plant life or health; and
- (f) in the absence of a receipt of any bids in response to a call for tenders made in accordance with this Annex.

## **Agreement on Internal Trade, Annex 502.4**

### **APPENDIX D**

#### **Exceptions - Circumstances for Sole Supplier Procurement**

The following are the exceptions for the purposes of paragraph I(2):

- (a) to ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licences, 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 subscriptions to newspapers, magazines or other periodicals;  
and
- (l) for the procurement of real property.