



**City of Kingston  
Report to Council  
Report Number 18-014**

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<b>To:</b>	<b>Mayor and Members of Council</b>
<b>From:</b>	<b>Desirée Kennedy, Chief Financial Officer and City Treasurer</b>
<b>Resource Staff:</b>	<b>Stephen Dickey, Director of Financial Services</b>
<b>Date of Meeting:</b>	<b>December 5, 2017</b>
<b>Subject:</b>	<b>Purchasing By-Law Amendment - New Trade Treaty Obligations</b>

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**Executive Summary:**

Earlier this year, new trade treaty obligations were negotiated and approved by the Federal and Provincial governments. Both the Canadian Free Trade Agreement (CFTA) and the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) have an impact on a number of entities including municipalities, school boards and hospitals as well as Federal and Provincial Crown corporations and agencies. As a result of these new treaties, there are new requirements and standards related to government procurement above a specified monetary value. For instance, under CETA, European Union suppliers will be able to bid on public tenders issued by Canadian provinces, cities and towns if the value of the procurement exceeds a monetary threshold.

Following a review of the new treaty legislation, and the need to ensure that the City is in compliance with these new statutory requirements, amendments are required to the City's Purchasing By-Law in order to reflect the obligations of the new trade treaties. Given that the new treaties enable a broader range of suppliers to bid on procurements, these amendments are being brought forward at this time, as the monetary value of upcoming construction project work going out to the market in the near future will be above the thresholds established in the new trade treaty obligations.

As a result, a number of general references to these trade obligations will be incorporated into the City's Purchasing By-Law.

**Recommendation:**

**That** a by-law be presented to amend By-Law Number 2000-134 being, "A By-Law to Establish Purchasing Policies and Procedures, as amended", attached as Exhibit A, in order to address new trade treaty obligations, with the amending by-law presented to Council on December 5, 2017 for all three readings.

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**Authorizing Signatures:**

ORIGINAL SIGNED BY CHIEF FINANCIAL OFFICER AND CITY TREASURER

**Desirée Kennedy, Chief Financial Officer  
and City Treasurer**

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

**Gerard Hunt, Chief Administrative Officer**

**Consultation with the following Members of the Corporate Management Team:**

Lanie Hurdle, Commissioner, Community Services	Not required
Denis Leger, Commissioner, Corporate & Emergency Services	√
Mark Van Buren, Acting Commissioner, Transportation & Infrastructure Services	√

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**Options/Discussion:**

New trade treaty agreements have been negotiated and approved at the Federal and Provincial levels of government and have recently come into force. These include the Comprehensive Economic and Trade Agreement with European Union (CETA) and the Canadian Free Trade Agreement (CFTA). Given that these trade agreements affect procurement, staff have been reviewing and updating current policies and procedures to ensure that they appropriately reflect the requirements resulting from these trade treaties.

The new trade treaty rules provide for greater openness in public procurements by setting out specific requirements for purchases over certain monetary value thresholds. In general, procurements must be nondiscriminatory, impartial, transparent and accountable. These changes include enhanced notification and expanded timelines to allow for international response, the avoidance of interference in evaluations, more formal management of conflict of interest and provision for a bid dispute process.

The monetary value thresholds over which these new procurement rules apply are set out in the regulations to these treaties, and these values will be periodically reviewed and updated. The table below illustrates the approximate levels which currently apply:

Type of Procurement	CFTA (\$CDN)	CETA (\$CDN)
Goods	100,000	340,000
Services	100,000	340,000
Construction	250,000	8,500,000

Many of the new trade treaty rules require processes that the City has had in place for some time. These include the use of an on-line digital service, such as Biddingo which is a bid distribution service used by many public sector organizations. The on-line digital service releases procurement documents, ensuring that clear and transparent evaluation criteria are provided in requests for proposal (RFP) documents, offering a debriefing process for vendors should they request this and ensuring there is nothing in procurement process which might be considered as favouring a local preference. Staff from Legal Services, Financial Services and Engineering has reviewed the trade treaty obligations in detail and are confident that our larger scale procurements will be in compliance.

An example of an upcoming procurement that must comply with these treaties is the RFP for the final phase of reconstruction of John Counter Boulevard, which includes the Canadian National Railway overpass, planned for release in December. The monetary value of this phase of the

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project is expected to be above trade treaty thresholds and therefore the City must follow the new treaty requirements.

Given the treaty legislation, it is now necessary to amend the City's Purchasing By-Law to reflect a number of general references to the trade treaty obligations along with the specific details of these obligations as required. The amending bylaw (see Exhibit A) will address key provisions in the existing Purchasing By-Law at Sections 2.15, 3.1 and 3.4 to confirm treaty related provisions.

In particular, the current wording under Section 2.15(ii) permits an opportunity for a prospective vendor to attend Council as a delegation. The ability for a prospective vendor to potentially influence Council is not in keeping with the fairness and transparency rules set out in the trade treaties and so this section is being amended to disallow this opportunity for procurements that are subject to trade treaty thresholds.

Currently, Section 3.1(ii) confirms that a buyer shall not be bound to accept the lowest price in consideration of other non-financial components. The change to this Section simply adds the consideration of trade treaty obligations to the list of non-financial components that may be considered in the decision to award any procurement.

Finally, Section 3.4 currently provides that when one of four criteria listed are not met, including where the lowest bid or proposal is not recommended by staff, the procurement must be approved by separate report to Council. Under the new trade treaty obligations, municipalities will have to ensure that evaluations of submissions follow the evaluation criteria as described in the RFP documents. In particular, Article 19.7(3)(b) of CETA states that a buyer shall base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation. This will require that municipalities across Ontario will have to ensure that evaluation scoring is fair and principled prior to the release of the procurement document.

While the new requirements would still allow Council to review where the procurement did not meet the provisions of Section 3.4, Council's role may be limited given the binding nature of the evaluation criteria of the new trade treaty rules. It is clear that the trade treaties require governments to evaluate bids and procurements according to the predetermined full, fair and transparent process as set out in the RFP or tender documents.

As a result, this section of the Purchasing By-Law is being amended to expand delegated authority provisions for procurements subject to trade treaty monetary thresholds only, when the award is made to the highest scoring proposal which is not the lowest price. Delegated procurements subject to trade treaty thresholds will be separately identified on the monthly Council information report summarizing procurements made under delegated authority.

The above changes to the Purchasing By-Law are required in response to trade treaty legislation. There may also be the opportunity for additional policy changes in order to streamline procurement processes for lower dollar procurements as well as changes that might

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be considered as a result of the automated procurement processes implemented earlier this year. Staff will continue to review opportunities and will bring a report to the Administrative Polices Committee in the new year for further discussion.

Staff is recommending three readings of the amending by-law in order to ensure trade treaty compliance for upcoming construction project work going out to the market in the near future.

**Existing Policy/By-Law:**

By-Law Number 2000-134 being, "A By-Law to Establish Purchasing Policies and Procedures".

**Notice Provisions:**

Not applicable.

**Accessibility Considerations:**

Not applicable.

**Financial Considerations:**

None

**Contacts:**

Steve Dickey, Director of Financial Services, extension 2370

Alan McLeod, Senior Legal Counsel, extension 1237

**Other City of Kingston Staff Consulted:**

Susan Nicholson, Director of Legal Services and City Solicitor, extension 1293

**Exhibits Attached:**

**Exhibit A:** A By-Law to Amend By-Law Number 2000-134, "A By-Law to Establish Purchasing Policies and Procedures"

**By-Law Number 2018-XX**

**A By-Law to Amend By-Law Number 2000-134, "A By-Law to  
Establish Purchasing Policies and Procedures"**

**Passed:** Month XX, 2017

**Whereas** the new trade treaty obligations have been introduced which affect procurement processes of Canadian municipalities including obligations under the Comprehensive Economic and Trade Agreement with European Union (CETA) and the Canadian Free Trade Agreement (CFTA); and

**Whereas** the Council of The Corporation of the City of Kingston deems it advisable to amend By-Law Number 2000-134 to address those treaty obligations;

**Therefore be it resolved that** By-Law Number 2000-134, be amended as follows:

1. By deleting Section 2.15(ii) and replacing it with the following:

Where an Offer to Procure must be awarded by Council and where the procurement is not affected by trade treaty obligations, Prospective Vendors may request that they be allowed to attend before Council as a delegation. Any such request shall be made to the Clerk and shall be dealt with pursuant to the Procedural By-Law.

2. By deleting Section 3.1(ii) and replacing it with the following:

In the awarding of any procurement, Buyers shall not be bound to accept the lowest price and may award to another Prospective Vendor if, in their discretion, having regard to trade treaty obligations, delivery time, service and quality of goods, past history of dealings or outstanding claims that would be in the best interests of the City.

3. By deleting Section 3.4 and replacing it with the following:

Commissioners and Directors are delegated the authority to approve the award of Contracts valued over \$50,000 when all of the following conditions have been satisfied:

- i) When there is a sufficient approved budget;
- ii) When all procedures for the establishment of prices in Section 4 of this by-law have been followed;
- iii) When the lowest priced Bid or Proposal is accepted or where the highest scoring proposal in an RFP subject to trade treaty obligations is accepted; and
- iv) When at least three valid responses from Vendors have been received.

Where each of the above four criteria are present, the procurement shall be reported to Council under Section 3.5. Where any one of the criteria is not present, the procurement must be approved by separate report to Council.

4. This by-law shall come into force and take effect on the date of its passing.

Given All Three Readings and Passed: Month XX, 2017

(Signed)

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**John Bolognone**  
**City Clerk**

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**Bryan Paterson**  
**Mayor**