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REPORT TO FIRST NATIONS RELATIONS COMMITTEE MEETING OF WEDNESDAY, APRIL 27, 2022

SUBJECT Procurement Policy Amendments for Procurement from Indigenous Businesses

ISSUE SUMMARY

To amend the Procurement Policy to allow for targeted procurement from Indigenous businesses to support economic opportunities and regional capacity building.

BACKGROUND

In October 2020, the Board received the CRD First Nation Economic Development Partnership Model Feasibility Study Report which identified amendments to the CRD Procurement Policy as one of the target actions to support First Nations in moving towards their desired economic outcomes. The report also recommended highlighting CRD procurement opportunities to First Nations, and developing a First Nations Skills Index and Service Database.

Since that time, staff have undertaken work to advance the recommended objectives in the area of procurement, including: updating the website to include new content on “Doing Business with the CRD” in order to make CRD procurement opportunities and processes more easily accessible; collaborating with partner organizations to develop a database of Indigenous businesses in the region, which will provide a useful resource for enabling procurement from Indigenous businesses; collaborating with First Nations to employ cultural monitors to support heritage site conservation in the context of land-altering works; and engaging in direct award contracts, under the requirements of the existing Procurement Policy, on an ad hoc basis as appropriate opportunities arise.

Amendments to the CRD Procurement Policy are a key component of the 2020 report recommendations. Greater clarity in the Procurement Policy will enable greater consideration of Indigenous procurement when purchasing goods and services while still ensuring that staff have appropriate guidance and oversight in our decentralized purchasing environment. The draft Procurement Policy changes, attached at Appendix A, are intended to be enabling rather than prescriptive, and provide guidance around how CRD may exercise its discretion to conduct Indigenous procurement opportunities in a way that supports regional economic capacity building for Indigenous businesses and communities.

ALTERNATIVES

Alternative 1

The First Nations Relations Committee recommends to the Capital Regional District Board: That the Procurement Policy be amended as attached as Appendix “A”.

Alternative 2

That this report be referred back to staff for additional information.

IMPLICATIONS

Currently, the Procurement Policy allows the purchases of goods and services from First Nation Governments to be excluded from the competitive requirements of the policy. This exclusion is permitted by the applicable domestic trade agreements which also include exemptions for procurements from non-profits and other government agencies, and for the purchase of certain categories of services such as legal, health or social services.

While the existing language in the Procurement Policy permits such action now, there has been no explicit direction in the current policy that would enable CRD staff on how to create such programs, what should be considered in developing such programs, and what division at CRD is meant to have oversight for such programs.

There are a variety of approaches other jurisdictions have implemented to encourage Indigenous procurement, including the following measures described below.

Indigenous Procurement Program Options

Direct award: a non-competitive process where an Indigenous supplier is awarded a contract without engaging in a competitive bidding process. This is used most often for low value contracts. The Greater Victoria Harbour Authority has implemented this approach with a policy that allows it to actively seek opportunities for direct awards to qualified Indigenous businesses for work valued at under \$20,000.

CRD currently utilizes direct awards for some contracts with Indigenous businesses, such as brush-clearing in the watershed, and operation of the Sooke Potholes Campground. Staff recommend that direct awards continue to be utilized for low-value contracts where there is a known Indigenous local supplier, qualified to deliver the services. Where there is more than one qualified Indigenous supplier, it may be more appropriate to utilize a competitive process under a set-aside program.

Indigenous Business set-aside: a procurement that has been reserved for competition among Indigenous businesses only. Set-asides may be prescriptive, such as requiring a certain percentage of a total capital budget, or a specific project budget, be reserved for Indigenous businesses only. In 2021, the Government of Canada set a target that 5% of the total value of all contracts with the federal government be awarded to Indigenous businesses. A benefit of a set-aside program is that it reserves the work for Indigenous businesses, while still preserving a competitive bidding process on what may be a more level playing field for the bidders.

While set-asides can be a useful tool on a national scale, with a larger pool of Indigenous businesses to draw from, it is less likely to meet the goal of supporting economic opportunities at a local scale where there may not always be enough qualified Indigenous businesses to run a competitive process. For this reason, staff do not at this time recommend the creation of a general set-aside target, but have included in the policy amendment an enabling provision to create a set-aside program should a specific opportunity arise.

Indigenous Business Participation (Unbundling) and Employment: creation of a condition in a tender that requests a portion of the works be awarded to an Indigenous business, or that a specified number of Indigenous People be employed on the project. This can be a desired condition of the procurement, such that those proponents who maximize the use of Indigenous businesses and employees receive a higher bid score, or a mandatory condition of the bid proposal. There are a number of jurisdictions that utilize this approach, including the Government of Manitoba, Metro Vancouver, and the Government of Yukon.

Staff have included unbundling and employment as recommended approaches in the policy revisions. It has been used successfully by the CRD in the past as a condition on the construction contract on the McLoughlin Point Wastewater Treatment Plant. Optimal projects for this approach are large-scale projects that are undertaken on or near First Nations lands or urban Indigenous communities, or works that are done on behalf of a Nation such as water or wastewater servicing.

Operational Implications

The draft policy amendment provides that CRD staff may develop programs, conduct direct awards or approve procurement methods on a case-by-case basis.

The draft policy provides that program criteria be approved by the Chief Administrative Officer and the General Manager, Corporate Services, whose Legal Services division is responsible for procurement policy compliance and oversees contract standards. A requirement for any such program is that they must balance the need to be competitive, best value procurement principles with the CRD's interest in economic development and capacity building in the region's Indigenous communities and rural and remote communities. Criteria must be drafted with a view to good contract management. This is based on other existing programs from public authorities and communities reviewed in developing this policy.

Direct awards for contracts under \$10,000 in value are encouraged for qualified Indigenous Businesses, where the goods, services or construction meet the bid requirements. Direct awards for contracts more than \$10,000 are subject to the non-competitive purchase process set out in section 8 of Appendix B, unless other program criteria are approved in advance of the purchase.

In addition, staff may consider the following in other procurements:

- a) encouraging partnerships and joint ventures with Indigenous communities and established businesses and suppliers;
- b) unbundling a percentage of works on a project, provided that the remainder of the works are subject to competitive procurement rules;
- c) including criteria for community benefit or capacity building as defined deliverables;
- d) coordinating works with those of Indigenous communities and entities that may benefit;
- e) requesting submission by vendors of Indigenous business sub-contracting plans to build capacity;
- f) establishing lists of pre-qualified suppliers;
- g) organizing and providing advance notice of upcoming procurement opportunities or hosting information sessions where appropriate; and,
- h) considering preferences for vendors identified by an Indigenous community, public authority, or government.

Intergovernmental Implications

Leveraging CRD procurement funds in support of Indigenous economic opportunities is a tangible way that the CRD can demonstrate a commitment to reconciliation. It also permits CRD to support capacity building by potentially encouraging the inclusion of contractors from and community benefits to regional First Nations, depending on the specific Nation's interests.

Social Implications

Enabling greater involvement of Indigenous businesses in CRD procurement will support these entities to access economic opportunities, thus increasing prosperity for Indigenous peoples. Following the standard set by the federal government and many other jurisdictions, Indigenous businesses are defined in the CRD policy on the basis of at least majority ownership, and in cases where there are 6 or more full-time employees, at least a third of the employees must be Indigenous peoples. This is a definition used by many public authorities.

Financial Implications

There are no direct cost implications associated with these policy amendments. Where programs may be developed in future to promote Indigenous procurement or First Nations' capacity building through the procurement process, any cost implications would need to be included in the project budget and approved in the financial plan. Any directed procurement program approved by staff will need to outline how the social objectives will balance the need to ensure best value and good contract management.

Service Delivery Implications

No impacts to service delivery are anticipated as a result of these policy amendments. Ensuring Indigenous proponents are qualified to undertake the required works or services remains an essential components of the bid evaluation process.

Alignment with Board Priorities and Existing Plans & Strategies

Enabling economic opportunities for Indigenous businesses supports Board Priority 3a-2 to 'Seek partnerships, share information & deliver fair & equitable services in working with First Nations on achieving their economic goals.' This Priority builds on the Board's Statement of Reconciliation theme of shared prosperity, recognizing the gap in wealth between First Nations and settler governments. The CRD First Nation Economic Development Partnership Model Feasibility Study Report (May 2020) identified amendments to the CRD Procurement Policy, along with making procurement opportunities more accessible and developing a database of Indigenous businesses, as opportunities to support First Nations in moving towards their desired economic outcomes.

CONCLUSION

To support First Nations' economic opportunities, the CRD website is being updated to make the CRD procurement process more easily accessible, a database of Indigenous businesses is being developed, direct awards to Indigenous businesses are offered where appropriate, and changes are proposed to the CRD Procurement Policy. The draft policy amendments are intended to enable greater consideration of Indigenous procurement opportunities, to support economic goals and capacity building for Indigenous businesses and communities, while still ensuring that staff have appropriate guidance and oversight.

RECOMMENDATION

The First Nations Relations Committee recommends to the Capital Regional District Board:
That the Procurement Policy be amended as attached as Appendix “A”.

Submitted by:	Caitlyn Vernon, MES, Manager, First Nations Relations
Concurrence:	Steven N. Carey, J.D., Senior Manager, Legal and Risk Management
Concurrence:	Kristen Morley, J.D., General Manager, Corporate Services & Corporate Officer
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ATTACHMENT(S)

Appendix A: Draft Procurement Policy 2022 [Redlined]