City Clerk's Division
COUNCIL FOLLOW-UP NOTICE

TO: Mary Gallagher, Co-ordinator
Office of the City Clerk

FROM: Mary-Ann Meyer, Legislative Assistant
City Clerk’s Division

RE: City Council Meeting – February 25, 2009

A. RESOLUTIONS:

Attached is Report 09-004 of the Audit and Administration Committee which was approved as amended and the information section received by City Council at its meeting held on February 25, 2009.

B. GENERAL NOTES:

Would you please take the necessary steps to execute the directions of Council with respect to the items contained in this Report. Specifically, I would like to draw your attention to Item 6(b) and Information Item (e).

6(b) That recommendation (b) of Report FCS09020 respecting 2009 Purchasing Policy Updates, which reads as follows, be referred to Committee of the Whole for consideration:

“(b) That the City of Hamilton not adopt any specific procurement policy with respect to applying a preference, or penalty, based on: item (i) - the geographical location of any vendor/supplier, or potential vendor/supplier, of goods and/or services to the City of Hamilton and its’ affiliated entities; and item (ii) - the Canadian, Ontario and/or Hamilton/local content of any goods and/or services provided, or to be provided, to the City of Hamilton and its’ affiliated entities;”

(e) PUBLIC HEARINGS/DELEGATIONS (Item 6)

(i) Randy Smith, CAW Local 504, respecting the CAW Buy Canada Campaign (approved at the February 4, 2009 meeting) (Item 6.1)

The delegation from Randy Smith, CAW Local 504, respecting the CAW Buy Canada Campaign was referred to Committee of the Whole.
(ii) Donald Fraser, Hamilton and District Labour Council, respecting “Buy Local, Buy Ontario, Buy Canada” (Item 6.2)

The delegation from Donald Fraser, Hamilton and District Labour Council, respecting “Buy Local, Buy Ontario, Buy Canada” was referred to Committee of the Whole.

(iii) Tony DePaulo or Ken Neuman, United Steelworkers, respecting “Purchasing Policy Updates” (Item 6.3)

The delegation from Tony DePaulo or Ken Neuman, United Steelworkers, respecting “Purchasing Policy Updates” was referred to Committee of the Whole.

Thank you,

Mary-Ann Meyer
Legislative Assistant
### SUBJECT: 2009 Purchasing Policy Updates (FCS09020) City Wide)

*Audit and Administration Committee Outstanding Business Items I and K*

### RECOMMENDATION: (a) That staff be directed to revise the current Purchasing Policy to incorporate the following items:

1. Make reference to the New Energy Commodity Policy and Proposed Amendments to the Existing Commodity Price Hedging Policy (PW08144/ FCS08114) (City Wide) report;

2. Amend Policy 1 – Policy for Electronic Vendor Database to include criteria for vendor eligibility and rename as Policy for Vendor Eligibility;

3. Amend Policy 5 – Policy for Determining Procurement Process to streamline the types of processes and to allow for funding requirements;

4. Amend Policy 11 – Policy for Negotiations to redefine the types of negotiations used;

5. Amend Policy 12 – Policy for Cooperative Purchasing to allow the City to take advantage of piggyback clauses;
(vi) Amend Policy 20 – Policy for Review of the Purchasing Policy to amend the frequency of the reporting requirement of the Policy.

b) That the City of Hamilton not adopt any specific procurement policy with respect to applying a preference, or penalty, based on: item (i) - the geographical location of any vendor/supplier, or potential vendor/supplier, of goods and/or services to the City of Hamilton and its’ affiliated entities; and item (ii) - the Canadian, Ontario and/or Hamilton/local content of any goods and/or services provided, or to be provided, to the City of Hamilton and its’ affiliated entities; and

c) That Items I and K be removed from the Outstanding Business List of the Audit and Administration Committee.

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Antonio D. Tollis
Acting General Manager
Finance and Corporate Services

**EXECUTIVE SUMMARY:**

Section 4.20 of the Purchasing Policy requires that the Manager of Purchasing reviews the Policy and recommends any necessary changes to the appropriate Standing Committee of Council for approval.

The current Purchasing Policy was approved by Council on May 16, 2007, (report FCS0717(a)). Since that time, recommendations for amendments are addressed in this report.

This report provides a brief overview of the proposed changes that are being recommended for the revised Purchasing Policy.

**BACKGROUND:**

Staff have reviewed several initiatives and are recommending changes to the Purchasing Policy. This report outlines the proposed changes being presented for approval. Once approved, staff will bring forward an amended Purchasing Policy for final review and approval. This report only addresses the more prominent changes being proposed to the Policy.

Staff have considered possible amendments that were identified by Council. These items are discussed in this report as well.
ANALYSIS/RATIONALE:

Energy Commodity Policy

On December 10, 2008, City of Hamilton Council approved Item 10 of the Audit and Administration Committee, Report 08-015, which pertained to the Implementation of the New Energy Commodity Policy and Proposed Amendments to the Existing Commodity Price Hedging Policy (PW08144/ FCS08114) (City Wide) report. The “new” Energy Commodity Policy deals with the procurement, sale, delivery, and storage of Energy Commodities.

This “new” Energy Commodity Policy should be referenced in the Purchasing Policy, as procurements related to Energy Commodities will no longer be subject to the competitive processes required in the Purchasing Policy.

Policy 1 – Policy for Vendor Eligibility

This policy is being expanded to include criteria for vendor eligibility. The policy outlines when the City may reject an otherwise compliant bid, or ban a vendor from competing for or being awarded City contracts. It speaks to situations, such as, where the commercial relationship between the City and the vendor has been impaired and where the City has reasonable grounds to believe that it would not be in the best interests of the City to enter into a contract with a vendor. The policy further provides the vendor’s obligation to deal, in good faith, once a contract has been awarded to them. The policy is explicit that the rejecting of otherwise compliant bids or the banning of vendors would not be done without Council’s approval.

Currently, a form of these provisions is included in the instructions to the bidder’s section of the Request for Tenders and Request for Proposals documents. However, since the integrity and ability of vendors to perform contracts is paramount, staff are recommending including these provisions in the Purchasing Policy to further highlight their importance as a City Wide policy. As well, these provisions will now be applicable for all vendors who do work for the City since informal processes and negotiated purchases generally did not include these requirements.

Policy 5 – Policy for Determining Procurement Process

In September 2008, the Ontario Ministry of Transportation issued a Canadian Content for Transit Vehicle Procurement Policy which outlines various requirements that need to be satisfied, including a Canadian content provision, in order to be eligible for Provincial funding. At its’ meeting of October 15, 2008, Council received correspondence from the Ministry respecting this policy and requested a report be brought back to the Audit and Administration Committee.

In order to address this requirement and possibly future funding requirements, staff are recommending a generic provision in the Policy 5 – Policy for Determining Procurement Process.
Process, to allow the specifications to include any unique requirements that are necessary in order to satisfy funding provisions imposed. Therefore, where the Provincial and/or Federal Governments impose certain requirements in order to qualify for funding, the City’s contract documents will include provisions to satisfy these requirements.

The Policy also defines the method of procuring a good or service by the estimated annual expenditure for that good or service. Staff are recommending to combine two sub-sections; Policy 5.3 – Policy for Request for Quotations ($50,000 – up to but not including $100,000) and Policy 5.4 – Policy for Request for Tenders ($100,000 and greater).

Although the content of the contract documents vary slightly, the process and amount of staff effort required to issue a Request for Quotations and a Request for Tenders is the same for both. The only significant difference is that the User Fee By-law does not include a fee for Request for Quotations but one exists for Requests for Tenders. Further, amalgamating these two sections eliminates the question of which type of procurement process to use when the estimated annual expenditure is in and around the $100,000 range.

Therefore, staff are recommending that the sub-section be amended to read Policy 5.4 – Policy for Request for Tenders ($50,000 or greater).

**Policy 11 – Policy for Negotiations**

The Policy for Negotiations includes nine types of requests. Of these nine types, it has been found that some types have never been utilized or that there are other means to satisfy the procurement requirements. Therefore, it is being recommended that some of the types be eliminated and deleted from the Policy.

**Type: When Two or More Identical Bids Have Been Received**

This request type has not been used as the City has not received an identical bid. The likelihood that identical bids be received is so remote and unlikely, that it is felt that this negotiation type is not necessary.

In the instance of Request for Proposals, the contract documents include provisions of how a tie score would be handled.

**Type: When No Bids Received are Compliant and it is Impractical to Reissue the Contract**

The City has adopted, as part of their procedures, a methodology to issue a post-closing addendum in instances where no compliant bids are received. Post-closing addendums are issued as a means for vendors to re-bid a contract; therefore, no negotiations are required.
Type: Where a Time Sensitive Situation Occurs

There are very few instances where a time-sensitive procurement is required as procurements are budgeted and planned for. In the instances where an unexpected event has occurred that requires immediate attention, the policy for emergency purchases (Policy #10) can be used to procure those goods or services to mitigate the situation.

Currently, staff may utilize the Policy 11 – Policy for Negotiations, citing that it is a time sensitive procurement and that there is insufficient time to follow the procurement process outlined in the Purchasing Policy. It is being recommended to remove this negotiation type from this policy and allow the department to still obtain pricing, without following the formal procurement process that would normally be required.

Therefore, in the instances where there is insufficient time to procure a good or service using the approved policy and procedures, staff are recommending that the General Manager of the Client Department and the Manager of Purchasing have the authority to jointly waive the formal process requirement of obtaining prices, and adopt the informal quotation process. The Manager of Purchasing will determine the most appropriate method of obtaining prices in each instance. In this way, the City is obtaining competitive quotes versus the current practice of having the Client Department suggesting one vendor via the Policy 11 process.

Policy 12 – Policy for Cooperative Purchasing

It is being recommended to expand the terms of this Policy to allow for the City of Hamilton to utilize a Vendor of Record, where established by Provincial Ministries, and to allow for the City to piggyback on another organization’s contract, where there are provisions to do so.

In some instances, the City is required to meet a Provincial standard for a particular good and/or service. If a Vendor of Record arrangement has been established by the Provincial Ministry for such good and/or service, it is being recommended that the City may use such an arrangement in place of the procurement process otherwise required by the Purchasing Policy.

The current co-operative provision in the Policy is restrictive in that the contract must specifically contemplate and provide for the City’s requirement. By expanding this provision to allow for a piggyback arrangement, the City can take advantage of larger contracts that include such a provision, without specifically naming the City as a participant. Many of the Provincial co-operative contracts are designed in this manner, and pricing obtained under these Provincial agreements would now be available to the City if it is advantageous to do so.
Policy 20 – Policy for Review of the Purchasing Policy

The Policy currently requires that, an annual report recommending changes to the Purchasing Policy, is brought forward to Committee and Council. Staff propose to amend this requirement to an “as required” basis. Annual changes may not be necessary, and with this amendment, staff can bring forward changes as required.

Buy Local, Buy Ontario, Buy Canada

A review of best practices has overwhelmingly shown that a local preference policy or any other policy giving preference to a vendor's location has not been adopted by any Ontario municipality or public authority and in several instances, their policy expressly prohibits it. This review consisted of approximately twenty public entities within Ontario.

The City of Hamilton is a member of the Ontario Public Buyers Association. Schedule ‘A’ of the current Purchasing Policy is the adaptation of the Association’s Code of Ethics, which states, in part, “Fair and Impartial Award Recommendations for All Contracts and Tenders”. This means that we do not extend preferential treatment to any vendor, including local companies. Not only is it against the law, it is not good business practice, since it limits fair and open competition for all vendors and is therefore a detriment to obtaining the best possible value for each tax dollar.”

The Purchasing Policy includes a policy for co-operative purchases, whereby the combined requirements of two or more public entities are put out in one tender in an attempt to secure a volume discount in the pricing provided in a vendor's bid. If a local preference policy existed for one or more participating Municipalities, how would a local preference policy be applied?

Further, correspondence received on January 22, 2009, attached as Appendix ‘A’ to report FCS09020 from the Hamilton Chamber of Commerce confirms that their position is they do not support a local preference policy, for various reasons, which included their concern of other Municipalities adopting the same practice and local business would then lose the ability to compete in a larger market.

New York State declared Ontario and Quebec as ‘discriminatory jurisdictions’ and prohibited Ontario and Quebec suppliers from bidding on their contracts due to the Canadian content policy. As a result, the Province of Ontario eliminated its’ Canadian content policy in June 2001. Similarly, the Province of Quebec also repealed its’ Canadian content policy in 2001.

The City of Toronto had adopted a Canadian content policy in July 2000 which was similar to the former policy of the Province of Ontario. Toronto suspended their policy in April 2003 as a result of the following challenges that they faced:

- There is an ongoing difficulty in verifying the claims of actual Canadian content. In one example, the City of Toronto issued a tender for a good, where there were three bids received. By the nature of the good required, all three vendors had
offered the same equipment in their bid. However, as part of their bid submission, each vendor was required to state what the Canadian content was, and each of the three vendors provided a significant difference in the Canadian content percentage reported by each bidder for the same equipment. Apart from the vendors not understanding how to report the Canadian content, as requested, there is a concern that vendors would misquote this information to put themselves at an advantage. Therefore, if such a policy was considered, how does one resolve this type of discrepancy for the same piece of equipment?

- Limited effectiveness and utility in achieving the stated policy goals. The City of Toronto reported that, during the three year period that their Canadian content policy was active, there were six (6) instances (of approximately 12,000 contracts) in which a contract was not awarded to the lowest bidder as a result of applying the Canadian content policy. The financial impact of awarding these six (6) contracts was an additional cost of approximately $45,000 to the City of Toronto.

- Increased risk of legal challenges, based on discrimination and preferential practices in procurement, requiring them to move from an ‘honour’ system to one that needs to be policed. This level of administration would be labour intensive and would result in increased staffing demands.

A review of the City of Hamilton’s 2008 expenditures was conducted (including procurement card spending, petty cash and payments made through Accounts Payable). The total expenditures were then adjusted for payments to such vendors as Manulife, Bell Canada, Shell Oil, Provincial and Federal Ministries, etc. In other words, those payments, where the City of Hamilton had no latitude of who to pay, were removed.

Based on the adjusted 2008 total expenditures, it was found that:

- 52.3% of money spent was to vendors in Hamilton;
- 42.5% of money spent was to vendors in Ontario (excluding Hamilton); and
- 5.1% of money spent was to vendors in Canada (excluding Ontario).

Therefore, 99.1% of money spent by the City of Hamilton was spent in Canada, of which 94.8% was spent in Ontario.

The City of Hamilton’s spending analysis shows that the majority of spending is already to local vendors, without having a specific policy requiring us to do so. Based on this analysis and the information provided above, staff are recommending to not adopt any specific procurement policy with respect to applying any preference to a vendor based on their geographical location.
ALTERNATIVES FOR CONSIDERATION:

N/A.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Legal

It is arguable that a “Buy Canadian” policy would be defensible based on governing legislation and applicable trade agreements. Should Committee and Council wish to pursue this option, a further report would be required from staff as to how to establish and implement such a policy so as to minimize the risk of legal challenge.

It would be difficult, however, to defend a policy that offered a preference to Ontario, Hamilton and/or “local” vendors and suppliers, as applicable Provincial Legislation actively seeks to eliminate discrimination based on, among other things, geographical location. Further, current public policy expressly discourages Municipal implementation of local preference procurement policies. If the City were to introduce a “Buy Canadian,” “Buy Ontario” or “Buy Hamilton/Local” policy, any of these policies could be subject to legal challenge by any vendor who asserts he/she/it has been disadvantaged as a result of said policy and/or preference.

With respect to the amendments to be made to the Purchasing Policy, it is proposed that the amended Purchasing Policy, once approved by Committee and Council, will form part of a stand-alone by-law so as to best meet the requirements of the Municipal Act, 2001.

POLICIES AFFECTING PROPOSAL:

Purchasing Policy.

RELEVANT CONSULTATION:

Legal Services Division, City of Hamilton
Various Ontario Municipalities
Hamilton Chamber of Commerce
CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Evaluate the implications of your recommendations by indicating and completing the sections below. Consider both short-term and long-term implications.

Community Well-Being is enhanced. ☑ Yes ☐ No
Environmental Well-Being is enhanced. ☑ Yes ☐ No
Economic Well-Being is enhanced. ☑ Yes ☐ No

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐ Yes ☑ No
Angela Boakes, CIM, CPPO  
Manager of Purchasing  
Purchasing Section  
City of Hamilton  
120 King Street West, Suite 900  
Standard Life Building  
Hamilton, ON  
L8P 4V2

Dear Ms. Boakes:

**Re: City Local Purchasing Policy**

By way of introduction, as you may know, Hamilton Chamber of Commerce is the oldest, largest, and most broadly based business organization extant in this broader economic region. Today, we comprise 2,100 individual members who represent almost 1,200 businesses of all sizes, sectors who collectively employ 75,000 Hamiltonians from all parts of the City, indeed, and many beyond.

We are given to understand that you are currently reviewing the above noted matter. Please be advised that we are very concerned with the direction that this proposed policy may take; i.e. that preference in purchasing decisions be given to local companies above other considerations. We do fully agree that, if all other factors are more or less equal, in assessing competitive bids, then, yes, preference should be given to a local supplier.

Nevertheless, further than that, while the aim of supporting local employment is indeed very laudable, particularly during a Recession; such a blanket measure as providing overriding preference to local suppliers may only needlessly add to the tax burden of local ratepayers, including business. More importantly, it may indeed actually be counter productive, i.e. **have precisely the opposite effect than what is intended**. Specifically, the last time that the Chamber looked at this issue (circa 1998-99); we were advised that far more Hamilton based businesses did work for other municipalities, than was the reverse.

Thus, if all municipalities did consistently follow a similar policy, it would actually limit more opportunities for Hamilton business than would be gained from it; and actually reduce net employment opportunities for Hamiltonians, overall.
Therefore, we would strongly recommend that before you would consider such policies, we recommend that you would effectively research two critically important factors, namely:

1. First and foremost, confirm whether or not the above noted remains true; i.e. vis-à-vis the ratio of dollars of business done by Hamiltonians in other communities, particularly neighbouring jurisdictions, versus just how much of the City’s business does go to firms located elsewhere, and if it does go elsewhere, how many Hamiltonians may these companies employ; plus,

2. If there are indeed other major municipalities in Ontario, particularly neighbouring jurisdictions where Hamilton companies actually do the most business, who are contemplating similar policies.

Optionally, we do suggest that you may perhaps wish to consider having potential suppliers specify the impact of their proposals on the local employment situation, as a factor for your consideration in determining suppliers.

In any event, we do encourage the City to proceed with extreme caution in this matter. The last thing that would be of benefit to us, as a City, would be to initiate a round of “protectionism” amongst Ontario municipalities. As a strategy to fight the symptoms of economic downturns, widespread “protectionism” has never been successful. Indeed, it has been long discredited amongst most responsible economists. Protectionism has usually been viewed as prolonging the worst effects of economic downturns.

However, frankly, of more pressing concern to the Chamber is a perception that clearly exists amongst many local businesses that they are not always aware of meaningful opportunities to become suppliers to the City. So, a communication strategy would seem to be needed to ensure that local businesses are provide with fully “equal” opportunities to compete for City work, including such things as consulting contracts, etc.

To be clear, we are not implying that City staff is in any way prejudiced against local business; but the feedback that we receive is that it is not clear to many how they may effectively be considered as suppliers to the City. In our view, the City’s processes for selecting suppliers can be made clearer to local businesses to give them the effective opportunity to compete more fairly and freely. If the Chamber can assist in that regard, we would be more than happy to do so.

In short, Hamilton businesses are fully competitive. We are fully convinced that local businesses can compete effectively for City work; and, perhaps save the City some money in the process, if consistently provided the opportunity. We do not need any artificial biases pre-engineered into the decision process itself.

We would be pleased to consult with you further on this important matter. If you wish to pursue this further, please contact our Chief Executive Officer, John Dolbec, at (905) 522-1151 ext. #229 or j.dolbec@hamiltonchamber.on.ca. Thank you for this opportunity to consult with you.

Yours truly,

Tyler MacLeod, President,
Hamilton Chamber of Commerce

CC: All Directors, Hamilton Chamber of Commerce, including Chairs of our Ancaster, Dundas, and (proposed) Glanbrook Divisions;
   All members of the Chamber’s Governmental Affairs and Business Development Committees
   The Mayor and all members of Hamilton City Council
   Local media.