CITY OF HAMILTON

CORPORATE SERVICES DEPARTMENT
Treasury Services
Financial Services Division

TO: Chair and Members
Audit and Administration Committee

WARD(S) AFFECTED: CITY WIDE

COMMITTEE DATE: October 6, 2010

SUBJECT/REPORT NO: Purchasing Policy By-law Amendment (City Wide)
(FCS10086)

SUBMITTED BY:
Antonio D. Tollis
Treasurer
Corporate Services Department

PREPARED BY:
Rick Male Ext 4157

SIGNATURE:

RECOMMENDATION

(a) That Purchasing Policy #1 – Policy for Vendor Eligibility be amended as follows:
   (i) subsection 4.1(3) be amended to also apply to subsections (6)(d) and (7),
       as described in Report FCS10086;
   (ii) the following subsection 4.1(7) be added:

(7) Where a vendor has the lowest compliant Bid to a RFT or RFP
    which has been rejected due to the vendor’s failure to initial a legible
    change such as an erasure, strike out, white out, cross out or overwriting,
    within one business day of the City’s request, the vendor shall also be
    banned from competing for or being awarded any City contract for a
    period of one year. Only the ban, and not the rejection of the Bid, may be
    challenged by the vendor in accordance with Purchasing Policy #18.

(b) That Purchasing Policy #18 – Policy for Vendor Complaint Resolution be
    amended by adding the following subsection 4.18(3):
(3) Where a vendor has been banned from competing for or being awarded any City contract for a period of one year in accordance with subsection 4.1(7) of Purchasing Policy #1 – Policy for Vendor Eligibility:
(a) the vendor may challenge the one year ban to the appropriate standing committee of Council where there are extenuating circumstances respecting why the initialing was not done within one business day of the City’s request; and
(b) the appropriate standing committee will provide to Council a recommendation with respect to the vendor’s complaint.

(c) That Purchasing Policy By-law No. 09-230 be amended to reflect subsections (a) and (b).

EXECUTIVE SUMMARY

At its March 10, 2010, meeting, Council approved Item 8 of the Audit and Administration Committee Report 10-003. Item 8 was further amended at the Council meeting of April 28, 2010. This item spoke to the proposed amendments to the Purchasing Policy and procurement documents that were approved by the Purchasing Sub-Committee.

These amendments have been incorporated in the construction tender documents and staff are in the process of incorporating these same changes to the goods and services tender documents and the Request for Proposals documents. This report is to authorize staff to implement changes to the Purchasing Policy regarding this issue.

Alternatives for Consideration – Not Applicable.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: None.

Staffing: None.

Legal:

The Purchasing Policy By-law needs to be amended to reflect the changes being proposed for Purchasing Policy #1 – Policy for Vendor Eligibility and Purchasing Policy # 18 – Policy for Vendor Complaint Resolution.
HISTORICAL BACKGROUND (Chronology of events)

Staff were directed to review the City’s tender documents and the Canadian Construction Documents Committee (CCDC) documents with a view to harmonizing the language and clauses.

During this review, staff met with members of the Hamilton Halton Construction Association (HHCA) to gain industry feedback on the amendments being made to the construction tender documents.

At the end of the review, there were a few items that were unresolved and were brought to the February 12, 2010, Purchasing Sub-Committee Meeting for discussion and resolution.

One issue addressed how the City should handle a bid where a legible change had not been initialled by the bidder. Considerations put forward included a straight rejection of the bid or accepting the bid.

After some discussion, staff were directed to incorporate language into the City’s procurement documents that allowed the City to accept a legible change that had not been initialled, provided the bidder made arrangements to initial the change within one business day of the City’s request. Should, however, the bidder fail to do so, the bidder’s bid is to be rejected and a one year ban is to be imposed. If the bidder felt that extenuating circumstances applied as to why the bidder failed to initial the legible change, the bidder’s recourse was to challenge only the one year ban (i.e. not the bid rejection) to the appropriate standing committee (currently Audit and Administration Committee).

These changes require some amendments to the current City Purchasing Policy. While originally it was anticipated that amendments were only required to Purchasing Policy #18 – Policy for Vendor Complaint Resolution, upon further consideration, amendments to Purchasing Policy #1 – Policy for Vendor Eligibility are also required and are being presented for approval in this report.

POLICY IMPLICATIONS

Purchasing Policy, Policy 18 – Policy for Vendor Complaint Resolution.
RELEVANT CONSULTATION

City Manager's Office, Legal Services Division
Public Works Department – Environment & Sustainable Infrastructure Division

ANALYSIS / RATIONALE FOR RECOMMENDATION
(include Performance Measurement/Benchmarking Data, if applicable)

Staff are reflecting the changes that have been approved by the Purchasing Subcommittee, Audit and Administration Committee and Council.

As Purchasing Policy #1 – Policy for Vendor Eligibility currently contains provisions regarding other situations in which a vendor may be banned from competing for or being awarded a City contract, it was determined to be appropriate and consistent to add a subsection 4.1(7) regarding the one year ban approved by Council. Given that Council also approved that the expanded definition of “vendor” contained in subsection 4.1(3) of Purchasing Policy #1 be applied to the one year ban, it is also recommended that subsection 4.1(3) be amended to cross-reference the new subsection 4.1(7), as well as, subsection 4.1(6)(d), another potential ban available to the City where a vendor has made an unauthorized amendment to the City’s pre-printed forms submitted as part of a vendor’s Bid but not discovered by the City until later.

Purchasing Policy #18 – Policy for Vendor Complaint Resolution is being amended to reflect the Council approved process to be followed where a vendor wishes to challenge the one year ban due to extenuating circumstances.

ALTERNATIVES FOR CONSIDERATION
(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

None.
CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


Financial Sustainability

- Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner

Growing Our Economy

- Competitive business environment

APPENDICES / SCHEDULES

None.