SUBJECT: Purchasing Policy Exemptions for Infrastructure Stimulus Fund and Recreational Infrastructure Canada Projects (FCS09052(a) (City Wide))

RECOMMENDATION:

That the City of Hamilton Purchasing Policy for projects that are accepted under the Infrastructure Stimulus Fund, the Recreational Infrastructure Canada in Ontario Program or the Ontario Recreation Program be amended as follows:

(a) That the upset limit of $100,000 be waived for assignments requiring the use of the Consultant Roster (Purchasing Policy #9);

(b) That the requirement to issue a formal Request for Proposals to the entire vendor community be waived and that Request for Proposals will be issued on an invitational basis only and staff will invite at least two firms to bid for each Request for Proposals (Purchasing Policy #5.5);

(c) That for Request for Tenders (Purchasing Policy #5.4) requiring a PreQualification process (Purchasing Policy #2), that the requirement to issue a formal Request for Tenders to the entire vendor community be waived and that Request for Tenders will be issued on an invitational basis only and staff will invite at least two firms to bid for each Request for Tenders; and

(d) That for projects requiring the use of Purchasing Policy exemptions related to the above-captioned recommendations (a), (b) and (c), staff will provide information updates on the assignments exempted from these purchasing policy requirements.

Roberto Rossini
General Manager,
Finance and Corporate Services
EXECUTIVE SUMMARY:

On April 15, 2009, the City was provided Infrastructure Stimulus Fund (ISF) program guidelines and information related to the application process (refer to report FCS09052).

The following conditions within the ISF Guidelines relate to project readiness as the timely commencement and completion of projects are required to ensure that ISF grants are not clawed back from the senior levels of government:

- The Minister of Transport, Infrastructure and Communities may cancel funding for any project that has not begun construction within sixty (60) days of its’ start date.

- All projects are required to begin and materially end construction prior to March 31, 2011. Should this condition of funding not be met, the federal government shall have the right to cancel funding in whole or in part, and further, shall have the right to clawback any advanced funding, in whole or in part, for any project that is not completed by the end of the program.

On May 11, 2009, the Governments of Canada and Ontario announced that municipalities throughout Ontario will be eligible to receive funding for upgrades and repairs thanks to the new Recreational Infrastructure Canada (RInC) program in Ontario and the Ontario Recreation program (Ontario REC) (refer to report FCS09061).

RInC and REC are designed to support the upgrading and renewal of recreational facilities in communities that can be completed by March 31, 2011. Similar to the ISF program, there are equivalent conditions for any approved projects to be completed with the risk of funding to be forfeited if the conditions regarding project completion are not met.

In light of the stringent time limitations, staff is recommending a number of exemptions from the City’s Purchasing Policy in order for ISF/RInC/REC approved projects to be streamlined and fast tracked to avoid any funding clawbacks:

- Policy #9 – Policy for Professional and Consultant Services is an RFP like process where Consultants are placed on a discipline specific roster category, and are used on a rotational basis. Contract C12-22-08 Request for Roster Candidates for Professional and Consultant Services Roster for the City of Hamilton for 2009 - 2010 was issued for the two year period ending December 2010. One of the requirements for this contract is that no assignment shall exceed $100,000. In light of the time constraints and consultant services required, staff is proposing that this upper limit be waived for these projects so that the scope of the work assigned can be more comprehensive (for example, by combining design and construction management efforts and issuing the assignment as a design build); reducing the number of RFPs required. Since an extensive competitive process was undertaken to evaluate and approve these consultants on the roster, staff is confident in their capabilities, resources, etc. and most importantly, it significantly reduces the cycle time to initiate work.
Policy #5.5 – Policy for Request for Proposals refers to where consultant requirements that do not fall under one of the disciplines in the consultant roster, staff will need to issue Request for Proposals. In an effort to expedite this process, staff is recommending that the requirement to advertise this work to the entire vendor community be waived for these projects. To ensure that the RFP remain a competitive process, a minimum of two firms will be invited to bid. In those instances where there are more than two firms with the required expertise, staff will invite these additional firms. Since the Client Departments know who the experts in their respective fields are, they can concentrate the evaluation of the proposals received on the actual project and methodology being proposed.

Policy #5.4 - Request for Tenders that would typically require a prequalification of contractors, staff recommends the same consideration as is being requested for Request for Proposals. For complex projects requiring specialized expertise or equipment, Policy #2 Policy for Prequalification of Vendors is used. For the same reasons as mentioned above, staff are recommending that these Request for Tenders be issued on an invitational basis only, with a minimum of two firms being invited to bid.

Therefore, the purpose of this report is to recommend the above specific exemptions to the Purchasing Policy for ISF/RInC/REC approved projects so that the risk of grant clawbacks as may occur under the program guidelines would be reduced.

**BACKGROUND:**

The 2009 Federal Budget established a new $4-billion Infrastructure Stimulus Fund (ISF) that focuses on the rehabilitation of existing assets and new infrastructure that can begin and be substantially completed by March 31, 2011.

In addition to the substantial completion requirement, there is provision within the ISF guidelines that funding for any project that has not begun construction within sixty (60) days of its' start date may be cancelled by the senior levels of government.

The new Recreational Infrastructure Canada (RInC) program in Ontario and the Ontario Recreation program are designed to support the upgrading and renewal of recreational facilities in communities that can be completed by March 31, 2011. Similar to the ISF program, there are equivalent conditions for any approved projects to be completed with the risk of funding to be forfeited if the conditions regarding project completion are not met.

Given concerns over potential funding clawbacks related to time sensitive requirements, staff are recommending a number of exemptions from the City’s current Purchasing Policy in order for ISF/RInC/REC approved projects to be initiated and completed to avoid any funding clawbacks:

1. That approved projects under the Infrastructure Stimulus Fund and the RInC/REC programs, be exempt from the current Roster Contractor $100,000...
upset limit requirement. To reduce timely delays, the departments would issue the assignments as Design Build.

(2) That approved projects under the Infrastructure Stimulus Fund and the RInC/REC programs, be permitted where applicable, to issue Request for Proposals on an invitational basis only with a minimum of at least two bids. Client Departments know who the industry leaders are and would reduce the evaluation time required to select a successful proponent.

(3) That approved projects under the Infrastructure Stimulus Fund and the RInC/REC programs, be permitted where applicable, to be exempt from Pre-Qualification Purchasing Policy requirements so that tenders shall be issued on an invitational basis only with a minimum of at least two bids with contract award based on lowest compliant bid.

This report (FCS09052(a)) is requesting Council's approval for recommended exemptions to the Purchasing Policy for ISF/RInC/REC approved projects so that the risk of ISF/RInC/REC grant clawbacks as may occur under the program guidelines would be reduced.

**ANALYSIS/RATIONALE:**

To be eligible for funding under the Infrastructure Stimulus Fund, the Recreational Infrastructure Canada (RInC) program in Ontario or the Ontario Recreation program, projects will be required to meet requirements with regards to project readiness and the project's ability to provide a stimulus to the economy.

The ISF/RInC/REC guidelines are very clear that any projects that fail to meet the time sensitive requirements of the funding programs there is the risk that some projects’ funding may be cancelled and clawbacked. As such, staff believe the recommendations of report FCS09052(a) should minimize the probability of any ISF/RInC/REC approved project funding being cancelled.

**ALTERNATIVES FOR CONSIDERATION:**

An alternative course of action would be to maintain the City's current purchasing policies but this could make the process more lengthy.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial - The initiation and completion of ISF/RInC/REC funded projects per the program guidelines will ensure that all approved funding is used to finance approved projects and does not result in the City having to bear additional financing costs beyond the one third funding commitment made with its ISF/RInC/REC project applications.
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Staffing – Purchasing may be hiring two contract buyers to complete the significant additional purchasing related workload that will be required by the stimulus infrastructure related projects.

Legal - N/A.

Policies Affecting Proposal:

City of Hamilton Purchasing Policy.

Relevant Consultation:

Various City departments who have submitted projects for funding consideration under the ISF/RInC/REC programs.

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.

Community Well-Being is enhanced. ☑ Yes ☐ No
Community assets will be rehabilitated and enhanced with the infusion of stimulus infrastructure funding.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Enhancement of the environment will be enhanced by some of the projects expected to be complete with the infusion of stimulus infrastructure funding such as energy efficiency projects.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Investment in Hamilton is enhanced and supported.

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