RECOMMENDATION:

(a) That the Purchasing Sub-Committee be established with political and industry representation in order to review policies and procedures regarding City procurement in accordance with the attached Terms of Reference (refer to Appendix ‘A’ to FCS07057); and

(b) That Item O be removed from the Outstanding Business List of the Audit and Administration Committee.

EXECUTIVE SUMMARY:

The Audit and Administration Committee directed that a Purchasing Sub-Committee be established with political and industry representation in order to review policies and procedures regarding City procurement.

The Audit and Administration Committee further directed staff to prepare Terms of Reference for this Purchasing Sub-Committee and present this information to the Audit and Administration Committee.

This report is intended to provide Council with the proposed Terms of Reference for this Sub-Committee.
BACKGROUND:

At the April 4, 2007, Audit and Administration Committee meeting, a motion was approved by Committee that staff be directed to solicit feedback on the City’s current procurement process from stakeholders and that staff prepare Terms of Reference for the proposed Purchasing Sub-Committee.

Historically, the Audit and Administration Committee would hear delegations regarding the City’s procurement process in accordance with Section 4.18 of the Purchasing Policy, which is the policy for Vendor Complaint Resolution. The intent of this policy is to allow Bidders, who feel they have been treated unfairly, an opportunity to appeal the process followed for the recommendation of award of a contract to the Audit and Administration Committee. This opportunity is available only after the Bidder has met with Purchasing and, in some instances, along with the Client Department, to review their submission and award process for a particular contract.

Concerns of possible inequity in the award process are generally brought forward after the contract is closed for bidding and the recommendation for the award of the contract is to another Bidder. The process for awarding the contract is included in Request for Tenders, Request for Proposals and Request for Quotations, so Bidders are aware, in advance, how their submission will be analyzed.

Also included in each document is a communications page, directing each Bidder to contact the Buyer with any questions they may have regarding any information in the Request for Tenders, Request for Proposals and Request for Quotations document. When questions or comments on the award process are not received from any of the Bidders, it is presumed that there are no issues regarding the process. Once the contract has closed, there is no ability for staff to amend the award process, and therefore must follow what was included in the documents issued.

The establishment of this Purchasing Sub-Committee will allow a better means of communicating with everyone involved in the procurement process, creating a better understanding of how the procurement process works and what challenges are faced by the vendor community.

Previously, the Purchasing Section, along with Risk Management, held several Bidders’ Presentations throughout the City, inviting the vendor community to attend. A question and answer period followed each presentation and a questionnaire was distributed to solicit additional feedback from the attendees. The feedback received was positive and there were suggestions made and discussions held regarding changes to the current process.

Previously, a Purchasing Sub-Committee existed. It was created post-amalgamation, and was in place for the first term of Council for the New City of Hamilton. The primary scope for this Sub-Committee was to review the annual purchasing policy amendments and to hear Vendor complaints.
ANALYSIS/RATIONALE:

At the April 4, 2007, Audit and Administration Committee meeting, staff was directed to contact various agencies and stakeholders to seek input on the procurement process. Associations that were specifically mentioned include:

- Ontario General Contractors Association
- Hamilton Halton Construction Association
- Ontario Association of Architects
- Hamilton and District Heavy Construction Association
- Consulting Engineers of Ontario; and
- Professional Engineers of Ontario

In addition, the Hamilton Chapter of the Professional Engineers of Ontario and the Hamilton Chamber of Commerce were contacted.

An email was sent to each of these Associations requesting a meeting to obtain input and feedback on the procurement process.

The following excerpt includes suggested topics for discussion that were highlighted in this request:

- Interest in bidding on City contracts
- Ability to submit bids for City contacts and any limitations
- Tendering process – identify potential road blocks
- Feedback on bonding and insurance requirements
- Access to information, clarity of instructions
- Ability to navigate the Purchasing Section web pages
- Feedback on recent process improvements and changes (enhanced web features, posting addendums on the website, on-line Bidder’s Application Form, Bidder’s Presentations)
- Are there any process or procedures that you would like to see remain the same?
- What changes would you like to see?

Staff received responses from only a portion of the organizations listed above and have therefore tried to contact these organizations via telephone to confirm their interest in participating.

To date, the only scheduled meeting is with the Hamilton Chamber of Commerce. The Director of Financial Services, along with the Manager of Purchasing, will be holding a Bidder’s Presentation at the Business Development Committee meeting scheduled for May 9, 2007. Following the presentation, there will be a question and answer period. As well, all members of the Hamilton Chamber of Commerce have been invited to provide feedback on the City’s procurement process.
Following the April 4, 2007, Audit and Administration Committee meeting, two changes to the procurement process were immediately implemented. All Request for Tenders and Request for Proposals now have public openings. Due to the nature of the Request for Proposals process, it is only the acknowledgment of the Proponents’ names who submitted Proposals that are read out at these openings. The other change was the elimination of any optional items in any future contract documents. Should the Client Department wish to have provisional items identified, they will be included in the Total Contract Price of the contract, which will be the basis for award. Once the preferred Bidder has been selected based on the Total Contract Price, the Client Department will have the ability to eliminate any of the items identified as provisional.

An internal meeting was held with representatives from Corporate Services, Public Works and Legal Services to discuss the proposed draft Terms of Reference. The following are the result of the discussions at this meeting.

**Membership**

It is recommended that the Purchasing Sub-Committee Structure be composed of the following:

(a) four Elected Officials, and  
(b) three industry representatives with one representative from the OGCA, one representative from the HHCA and the third industry representative to be determined (non-voting members)

Staff support will be provided by Public Works, Corporate Services and Legal Services with additional staff presentation at the discretion and direction of the Purchasing Sub-Committee.

**Mandate**

The Terms of Reference for this initial Sub-Committee would include:

(a) Review the existing Purchasing Policy and processes and recommend changes, as necessary  
(b) Establish when and how a Fairness Commissioner would be used  
(c) Hearing delegation requests on the procurement process to consider amendments to the current process

A request was made to municipalities belonging to the Ontario Public Buyers’ Association on the use of Fairness Commissioners. As well, staff received input from the project management firm involved in the City of Hamilton’s City Hall Accommodations Request for Proposals. Eight responses were received in total. Of these eight responses, three municipalities have never used a Fairness Commissioner (Town of Innisfil, Town of Aurora and the Town of Richmond Hill). Respondents who confirmed the use of a Fairness Commissioner advised that the scope of their work included reviewing and vetting the Request for Proposals document and any subsequent addenda that were issued, the evaluation criteria or rating system, and facilitated the evaluation process and instructed the evaluation team on the evaluation process. In essence, the purpose of retaining these Fairness Commissioners was to verify the transparency of the process and to ensure that it was fair and open to the
vendor community. None of the correspondence indicated that Fairness Commissioners were involved in vendor complaints or acted as an Ombudsman for the project. The Region of York indicated that if a vendor complaint was received, the report from their consultant, who was retained for the role of Fairness Commissioner, would be released to verify the transparency of the procurement process.

Estimates from Fairness Commissioners were obtained to obtain an understanding of the costs associated with this review. Rough estimates indicated that these services would start at approximately $50,000 per project.

**ALTERNATIVES FOR CONSIDERATION:**

There are no alternatives recommended for consideration.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Development and approval of enhanced policies outlined above would minimize the legal and financial risks to the City from vendor claims and potential conflicts of interest.

There are no staffing implications as a result of this report.

**POLICIES AFFECTING PROPOSAL:**

Purchasing Policy, approved by Council on October 25, 2005.

**RELEVANT CONSULTATION:**

Discussions and feedback was obtained from Public Works, Legal Services and Corporate Services. In addition, feedback is being requested from stakeholders and organizations involved in the procurement process.

Information was requested by members of the Ontario Public Buyers Association on the use of a Fairness Commissioner.

**CITY STRATEGIC COMMITMENT:**

By evaluating the “Triple Bottom Line”, (community, environment, and 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

Making changes to the procurement process as a result of soliciting input from stakeholders and organizations involved will provide insight on the process and the view that it is fair, open and transparent.

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

Enhancements to the procurement process as a result of input from the vendor community will allow for a better understanding the Purchasing Policy, encouraging more vendors to bid on City Contracts, garnering more competitive bids.

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
Purchasing Sub-Committee

Terms of Reference

1. PURPOSE

To review policies, procedures and processes regarding City procurement as it relates to the construction industry as a whole, with input and consideration from members of the construction industry.

2. MANDATE

The mandate of the Purchasing Sub-Committee shall be to:

(a) review the existing Purchasing Policy and processes and recommend changes as necessary;
(b) establish when and how a Fairness Commissioner would be used; and
(c) hear delegations on the procurement process to consider amendments to the current process.

3. MEMBERSHIP

The Purchasing Sub-Committee shall be composed of the following:

(a) four Elected Officials; and
(b) three industry representatives with one representative from the OGCA, one representative from the HHCA and the third industry representative to be determined (non-voting members)

4. REPRESENTATION

A quorum shall be achieved when 50% plus one of the voting membership body is present. (3)
5. **FUNDING**

The Clerk’s Division shall provide for the administrative costs of operating the Purchasing Sub-Committee, meetings and clerical support.

6. **MEETINGS**

   a) The Purchasing Sub-Committee shall meet as necessary.
   
   b) The meetings will be scheduled at the call of the Chair.

7. **MINUTES AND AGENDAS**

   a) Clerk’s Department staff will be responsible for the preparation of the meeting agendas and minutes.