

# PROCUREMENT

# BYLAW 2021-103

## Non-Standard Procurements Protocol

**EXTERNAL VERSION**

Version: 2

Release Date: January 31, 2022

PROCUREMENT OFFICE



# PROTOCOL 4: Non-Standard Procurements

PUBLISHED

## 1. PURPOSE

The purpose of this protocol is to set out the process and requirements for acquiring deliverables through a non-standard procurements process as provided for under the Region's Procurement Bylaw 2021-103. A non-standard procurement applies to both emergency and non-emergency circumstances, permitting the procurement of deliverables through methods other than those normally applicable for the type and value of deliverables, as per the Standard Procurements Protocol.

This protocol should be read in conjunction with the Region's Procurement Bylaw or its successor, the Standard Procurements Protocol, and the Purchase Order Activities Playbook and Appendix (for internal use only).

## 2. DEFINED TERMS

Commonly used procurement terms in this protocol are defined in the Glossary and Commonly Used Procurement Terms document.

## 3. APPLICATION

This protocol is applicable to all non-standard procurements, regardless of whether the procurement was facilitated through the Procurement Office or not. In all instances where deliverables, are procured through a non-standard procurement, the Procuring Department must provide appropriate justification by referencing the applicable type of non-standard procurement defined in section 5 of this protocol.

As per the Procurement Bylaw, Section 14.3, **under no circumstances** shall a non-standard procurement be used for the purpose of avoiding competition among suppliers or in a manner that discriminates against or gives an unfair advantage to suppliers based on any grounds identified in the trade agreements.

## 4. ALIGNMENT TO REGIONAL PROCESSES AND PROTOCOLS

Despite their non-standard nature, all non-standard procurements should follow the best practices outlined in the Region's 5Ps Procurement Lifecycle Framework starting with planning, preparation of business requirements, and determining an appropriate procurement solicitation method to support each respective non-standard procurement.

All non-standard procurements must also adhere to Purchase Order (PO) Requirements Protocol, to determine the appropriate payment mechanism for the type and dollar value of the procurement.

## 5. TYPES OF NON-STANDARD PROCUREMENTS

Non-standard procurements are permitted only under one or more of the following specific circumstances:

**TABLE 1: NON-STANDARD PROCUREMENT FORMATS**

Type	Description
<b>5.1 Emergency Purchases</b>	<p><b>Emergency Purchase</b>, where an event or circumstance which requires the immediate purchase of deliverables to prevent or alleviate at least one of the following circumstances:</p> <ul style="list-style-type: none"> <li>a. A serious delay in service delivery that could not have been foreseen; or</li> <li>b. A threat to the health, safety, or welfare of any person; or</li> <li>c. The disruption of essential services; or</li> <li>d. Damage to public or private property, and includes, but is not limited to, an emergency declared under the <i>Emergency Management And Civil Protection Act</i>.</li> </ul>
<b>5.2 Direct Purchases or Limited Competitions UP TO \$100K</b>	<p><b>Direct Purchase</b>, where the deliverables are acquired directly from a supplier of choice without conducting a competitive process, where the circumstances do not allow for any form of invitational or competitive process to be conducted, and include at least one of the following circumstances:</p> <ul style="list-style-type: none"> <li>a. The <b>compatibility</b> of a purchase with existing equipment and/or service is the paramount consideration and for that reason the required deliverables can only be procured directly from a single specific supplier.</li> <li>b. There is <b>only one entity</b> reasonably capable of providing the required deliverables and as such can only be procured from a single supplier has exclusive rights in respect of the deliverables, where no reasonable alternative exists.</li> <li>c. The deliverables are required for <b>research and development purposes</b>, including: <ul style="list-style-type: none"> <li>i. A prototype or a pilot (first good or service) to be developed for a particular contract for the purpose of research, experiment, study, or original development. Any subsequent purchases resulting from a prototype or pilot should be procured separately.</li> <li>ii. A prototype or a pilot does not include original development of a prototype or pilot including limited production or provision of results of field testing, where the purpose of original development is to demonstrate that the prototype or pilot can be scaled to the required quantity and quality standards, <b>but does not include</b> quantity production or supply to establish commercial viability or to recover research and development costs.</li> </ul> </li> <li>d. <b>Limited Competitions</b>, where bids must be solicited by invitation from a limited number of suppliers, where an open competition would normally be required, but the unique circumstances require the solicitation of a limited number of competitive bids.</li> </ul>

**TABLE 1: NON-STANDARD PROCUREMENT FORMATS (CONTINUED)**

Type	Description
<b>5.3 Direct Purchases OVER \$100K</b>	<p>As per Section 3.3 of the <u>Procurement Bylaw</u>, the provisions of any applicable Trade Treaties will supersede any absent or contradictory provisions within the Bylaw, as determined by the Procurement Review Committee.</p> <p>Any circumstances under the <b>applicable trade treaties</b> allowing for deliverables to be directly purchased, without competition or, allowing for limited competition through an invitational call for bids to select suppliers.</p>
<b>5.4 Other Non-Standard Procurements authorized by Council</b>	<p><b>Other non-standard procurements authorized by Council</b> under the Contact Awards and Amendments (CAA) Report or other Council approvals, including Corporate Standards.</p>

## 6. REPORTING OF PURCHASES AUTHORIZED AS NON-STANDARD

All contracts awarded through a non-standard procurement, over \$100,000, must be reported to Council, as per Section 16.3 of the Procurement Bylaw. This includes the value and description of the deliverables procured and a statement indicating the circumstances and conditions that justified the use of a Non-standard procurement.

## APPROVALS

This Protocol has been approved by the Director, Procurement Office, and where applicable, by Legal Services.