

SECTION GENERAL ADMINISTRATION	NAME OF POLICY UNSOLICITED PROPOSALS
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POLICY STATEMENT

On occasion, the Regional Municipality of Niagara (“The Region”) receives unsolicited proposals from parties. When the proposal is in the best interests of the Region, as identified by the responsible parties identified in this policy (section 5.0) and complies with all other criteria provided in this policy, the Region may consider the opportunity.

POLICY PURPOSE

The Region receives unsolicited proposals from parties, which may offer improved services, reduced cost, cost avoidance, or provide other benefits. The primary objective of this policy is to permit the Region to receive and consider unsolicited proposals from parties in a manner that eliminates the perception of bias, and ensures transparency, fairness, and best value for the Region. The policy also provides a party with a prescribed process to approach the Region with unsolicited proposals that protects their proprietary trade information.

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SCOPE

This policy applies to:

- All unsolicited proposals received by the Region from parties, and
- All employees of the Region and elected officials.

GUIDELINES

This policy recognizes, complies and acts in accordance with the Region’s Purchasing By-law #130-2010, as amended. All managers shall monitor compliance to this policy. Failure to comply with this policy may result in employee disciplinary action.

PROCEDURE

1.0 Eligibility

- 1.1. The unsolicited proposal must be submitted to the Chief Administrative Officer, Commissioner or a departmental Director.
- 1.2. The information initially provided to the Region, should be at the **conceptual level** and shall include the following:
 - (a) A profile, highlighting the technical, commercial, managerial and financial capacity and capabilities of the participant, identifying key team members, including members of a consortium, if relevant;
 - (b) An overview of the project to be undertaken, the deliverable to be achieved, or the improvement to be made to an existing undertaking. Must clearly define the proposed benefit to be realized by the Region;
 - (c) High level business principles for undertaking the project, including the proposed financial relationship and responsibilities of both the Region and the participant, as well as the respective risk sharing allocations; and
 - (d) Expectations by the party of the Region, including both financial expectations and any staff assistance in preparing or finalizing the unsolicited proposal.
- 1.3 Unsolicited proposals shall **not** circumvent the Region’s Purchasing by-law, and shall not qualify under this policy if in the opinion of the Purchasing Services the proposal is similar in scope to a current or upcoming competitive procurement that has been issued, or is planned to be issued.

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- 1.4 If the proposal suggests a different scope, style or approach, that may improve the Region’s position in any way, the procurement process may be suspended in order to allow the proposal to be considered. In this case, only one of the following outcomes shall result:
- (a) The scope of work with the bid will be amended to recognize some or all of the suggestions contained within the unsolicited proposal, and the amended scope of work; or
 - (b) Objective will be publicly competed, to allow all interested “bidders” to consider the implications; or
 - (c). The Region will revert back to the original procurement, either planned or in progress.
- 1.5 The Commissioner and/or Director will determine the eligibility of the unsolicited proposal under this policy taking into account such factors as:
- (a) The goods or services are readily available from other sources in a competitive marketplace, and no unique added benefit is being proposed;
 - (b) The proposed project is not of sufficient value to be pursued at this time, within overall the Region’s priorities;
 - (c) The Region is unable or unwilling to fund its share of the implementation or the costs associated with the competitive process;
 - (d) The cost and resources required to consider the proposal is too excessive.
- 1.6 If the unsolicited proposal is, in the opinion of the Commissioner and/or Director, not in the best interests of the Region, the party will be so advised, and no further action will be taken in relation to the proposal concept.
- 1.7 If the unsolicited proposal is, in the opinion of the Commissioner and/or Director, in the best interests of the Region, the party will be notified and:
- (a) Provided with any available information describing the Region’s requirements for the goods or services proposed;
 - (b) Provided with the evaluation criteria to be considered by the evaluation team, and if necessary;
 - (c) Requested to prepare and submit a detailed proposal, at its sole expense, within a prescribed format and an agreed upon timeframe; and
 - (d) Required to confirm in writing their agreement to continue in accordance with the provisions of this policy.

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1.8 All unsolicited proposals received under this policy will be open for consideration by the Region for a minimum period of six months.

2.0 Evaluation

2.1 An evaluation team will be assembled by the Commissioner and/or Director to include sufficient expertise to evaluate the detailed unsolicited proposal and include a representative from Purchasing Services. The evaluation team will:

- (a) Evaluate the participant’s technical, commercial, managerial and financial capacity to determine whether the capabilities are adequate for undertaking the project;
- (b) Evaluate the unsolicited proposal in relation to the evaluation criteria provided to the participant;
- (c) Weigh the various aspects and merits of the unsolicited proposal and the business and contract principles to determine if the scale and scope of the project is in line with the requirements, the funding ability, and/or the interests of the Region;
- (d) Determine whether the sharing of risk as proposed in the unsolicited proposal is acceptable to the Region;
- (e) Consider both the level of effort required of the Region’s staff in relation to any proposed benefit, and the degree to which the project conforms with the long term objectives of the Region.

2.2 Based upon the outcome of this detailed evaluation, the Region will:

- (a) Reject the unsolicited proposal thereby ending any further obligation on the Region’s part; or
- (b) Request amendments, clarifications or modifications to the unsolicited proposal; or
- (c) Accept the proposal as being in the best interests of the Region and seek approval as follows:
 - (i) The detailed unsolicited proposal includes attributes recognized as acceptable under section, 19, negotiations of the Purchasing By-law.
 - (ii) The Commissioner and/or Director shall seek approval in accordance with the delegated authority to consider the proposal under this policy.

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3.0 Delegated Authority

- 3.1 Department Directors will have delegated authority to approve the application of this policy for proposals where the value of the revenue, cost or benefit is less than \$250,000. The Chief Administrative Officer and/or Commissioner will have delegated authority to approve the application of this policy for undertakings where the value of the revenue, cost or benefit is less than \$1,000,000. Council will be required to approve the application of this policy for all undertakings where the value of the revenue, cost, or benefit is expected to equal or exceed \$1,000,000. These authorities match the execution authority as identified in the Region’s Purchasing By-Law.
- 3.2 Where funding for the purpose envisioned in the unsolicited proposal is required which Council did not previously approve, a report must be presented to Council for approval of the required funds.

4.0 Procurement Process

- 4.1 Following the approval to proceed with the unsolicited proposal, staff in the Purchasing Services Division in conjunction with the operational unit, will invite competing counter proposals, in a transparent, fair and equitable manner in accordance with the principles contained in the Purchasing By-Law by:
 - (a) Communicating the opportunity using the Region’s Request for Proposal (RFP) format, through an internet based bid distribution network, defining the Region’s procurement process, and allowing sufficient time for any interested party to submit a counter proposal;
 - (b) Providing interested proponents with the main concepts of the detailed unsolicited proposal, including the contract principles and risk sharing framework, while keeping proprietary information contained in the original proposal confidential to the extent possible; and
 - (c) Ensuring that the original evaluation team evaluates all counter proposals received, with any necessary changes to the team membership requiring approval by the Commissioner and/or Director.
- 4.2 If the RFP results in no counter proposal being received, or if the counter proposal(s) are evaluated and found to be equal to or inferior to the original unsolicited proposal, in the sole opinion of the Region, a recommendation will proceed to award the contract under delegated authority to the original party.
- 4.3 If the RFP results in one or more counter proposals being received, and if, in the sole opinion of the Region, the counter proposal(s) are evaluated and found to be superior to the

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original unsolicited proposal, the Region will proceed to determine the successful participant through a final procurement phase known as “Best and Final Offer” (BAFO).

- (a) BAFO as applied to this policy is the process whereby the Region will invite the original party and the proponent submitting the superior counter proposal to engage in a BAFO phase. The invitation to participate in the BAFO phase will provide to both participating proponents:
 - (i) The general concepts that were considered superior to the original proposal, while keeping proprietary information contained in the proposals confidential to the extent possible; and
 - (ii) The pre-established evaluation criteria or the “basis of award” to be used to determine the successful proponent.
- (b) Offers received in response to the BAFO invitation will be reviewed by the evaluation team and scored in accordance with a pre-established criteria, or alternatively, in accordance with the “basis of award” provision identified through the BAFO process. The successful proponent will be the proponent offering “best value” to the Region.
- (c) In all cases, the basis of award will be “best value” to the Region, as defined in this policy, in the sole opinion of the Region.

5.0 Responsibilities

- (a) The Commissioner and/or Director will be responsible for determining whether the unsolicited proposal qualifies under this policy from a business perspective, and if the Region should continue to entertain the proposal.
- (b) The responsible service manager and Manager of Purchasing Services will be responsible for determining if the undertaking is similar in scope to a current or planned procurement activity.
- (c) The Commissioner will be responsible for this policy process that invites and evaluates competing proposals.
- (d) The Commissioner and/or Director must approve any decision to reject an unsolicited proposal, based on supporting rationale provided by the evaluation team.
- (e) Council will be responsible for approving the application of this policy for all undertakings where the value of the revenue, cost, or benefit is expected to equal or exceed \$1,000,000.
- (f) Senior management is responsible for ensuring that their employees are fully aware of the requirements and for enforcing this policy.

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DEFINITIONS

Best and Final Offer (BAFO) means the procurement process intended to allow the original party and the proponent submitting the superior counter proposal the opportunity to amend, refine and improve upon their proposal submission so that they more closely align with the Region’s objectives, and allow the Region to select the proposal that offers the best overall value to the Region.

Best Value means the optimal balance of performance and cost determined in accordance with a pre-defined evaluation plan.

Competitive procurement means a publicly competed opportunity for bidders using one of the several bid solicitation documents, generally distributed electronically.

Conceptual Level Proposal means the initial “high level” unsolicited proposal submitted by the party, to be considered by staff under this policy.

Counter Proposal means a responsive proposal received as a result of the Region’s RFP, from a proponent other than the original proponent.

Detailed Proposal means a proposal prepared in sufficient detail to allow evaluation against the criteria established by the Region.

Evaluation Team means the team to review and analyze the proposals, and may be comprised of staff, and/or external consultants.

Inferior Proposal means a competing counter proposal received in response to an RFP, evaluated in accordance with pre-determined criteria by an Evaluation Team, and deemed to be of less value to the Region, than the original unsolicited proposal.

Superior Proposal means a competing counter proposal received in response to an RFP, evaluated in accordance with pre-determined criteria by an Evaluation Team, and deemed to be of greater value to the Region, than the original unsolicited proposal.

Unsolicited Proposal means a proposal received by Regional staff from a vendor, consortium, or any other proponent, which was not provided in response to a formal request from the Region, but which was submitted through the initiative of the proponent.