

SUSTAINABLE PROCUREMENT POLICY - SUBCONTRACTOR COMPLIANCE

Recommendation

That the November 27, 2024, Financial Corporate Services report FCS02488, be received for information.

Requested Action	Information only		
ConnectEdmonton's Guiding Principle	ConnectEdmonton Strategic Goals		
CONNECTED This unifies our work to achieve our strategic goals.	Regional Prosperity		
City Plan Values	THRIVE		
City Plan Big City Move(s)	Inclusive and compassionate	Relationship to Council's Strategic Priorities	Economic Growth
Corporate Business Plan	Managing the Corporation		
Council Policy, Program or Project Relationships	<ul style="list-style-type: none"> • Council Policy C612B: Living Wage for City of Edmonton Employees and Employees of Contracted Services • Council Policy C556C: Sustainable Procurement 		
Related Council Discussions	<ul style="list-style-type: none"> • July 3, 2024, FCS02346, Living Wage and Sustainable Procurement Updates • May 3, 2024, FCS02345, Annual Delegation of Authority 		

Previous Council/Committee Action

At the May 3, 2024, Executive Committee meeting, the following motion was passed:

That Administration provide a report on metrics to evaluate subcontractors regarding compliance with the City's Sustainable Procurement Policy, and gives an interim analysis of the efficacy of that policy on existing contracts.

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Executive Summary

- Generally, contractors are responsible for ensuring subcontractors comply with City contract requirements.
- City contracts include mechanisms to allow the City to enforce contractors' contractual obligations.
- Administration is reviewing, augmenting and enhancing existing mechanisms that ensure contractor and subcontractor compliance.
- The City has robust policies and procedures in place that ensure contractor and subcontractor obligations are being met. City contracts are instruments that create the environment for policy objectives and outcomes to be met.
- The City's Sustainable Procurement Policy leverages City purchases to create economic, environmental and social impacts for Edmontonians, with focus on eliminating barriers for participation in City purchasing for Indigenous and equity-deserving communities. It also advances the City's Indigenous Framework and anti-racism objectives.

REPORT

The City enters into contracts for goods, services, construction or intellectual property rights with a contractor. The contract specifies the responsibilities and rights of each party to the contract, and allows the contractor to use subcontractors to carry out the work.

While there is no contractual relationship between the City and subcontractors, City standard contracts require contractors to ensure subcontractor compliance with obligations under the primary contractor's contract.

As the work of the contract is carried out, the City typically addresses subcontractor issues with the contractor, as the contractor is responsible for its subcontractors.

The City's Sustainable Procurement Policy leverages City purchases to create economic, environmental and social impacts for Edmontonians. The Policy also advances the City's Indigenous Framework and anti-racism objectives. It includes four guiding principles:

- Ethical Standards;
- Environmental Sustainability;
- Indigenous Procurement; and
- Social Value Considerations.

The City is developing an overall sustainable procurement program that is governed by the overarching policy and guiding principles. The sustainable procurement program:

- provides information about how the policy will be implemented;
- offers tools that operationalize aspects of the program; and
- provides support to help communicate, educate, activate and engage with City staff and stakeholders.

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Contractor and Subcontractor Compliance Mechanisms

Supplier Code of Conduct

All standard form contracts used by the City require contractors to ensure that they and their subcontractors comply with all applicable laws, including due diligence to ensure that their workers are authorized to work in Canada. In addition, contractors must ensure that they and their subcontractors comply with the City's Supplier Code of Conduct, which can be found in Attachment 1. Performance standards are organized into four categories:

- Social Responsibility: Working conditions in both contractor and subcontractor facilities (including forced labour, equality and non-discrimination, health and safety, wages and benefits, etc.)
- Environmental Standards: Environmental impacts related to operational practices of both contractors and subcontractors
- Business Ethical Standards: Ethical business practices by the contractor and its directors, officers and employees
- Management Standards: Management of company-wide operations by contractors

The City's standard contracts and Supplier Code of Conduct require both contractors and their subcontractors to comply with the Supplier Code of Conduct. The City also recently amended the Supplier Code of Conduct to align with definitions found in the federal *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, which came into force in 2023.

Sustainable Procurement Menu

In August 2023, the City launched its "Sustainable Procurement Menu." This tool is used by Administration when developing competitive procurements and contracts. The menu provides a number of procurement evaluation and contract requirement options that can be used. Options may be incorporated into procurements as evaluated criteria and/or as contract requirements. Contractors respond to the evaluated requirements when they bid on City work and then are responsible to ensure compliance with requirements incorporated into contracts. This includes ensuring compliance by subcontractors where appropriate.

The options relate to the environmental sustainability, Indigenous procurement and social value considerations policy guiding principles. Criteria outcomes examples include:

- Employment opportunities for Indigenous peoples or members of equity-deserving groups
- Training and apprenticeship opportunities
- Use of social enterprises or small, Indigenous, or diverse-owned businesses as contractors and subcontractors
- Community development actions
- Environmental actions related to waste, pollution, water reduction, energy efficiency and emissions management

A full list of the potential menu requirements is included in Attachment 2.

Contracts prior to August 2023 do not include any Sustainable Procurement Menu contract requirements; though City standard contracts, whether entered into prior to or after August

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2023, generally include contractual mechanisms related to general audit provisions, compliance with the Supplier Code of Conduct, default/termination clauses and requirements to comply with all applicable laws.

Reporting on Sustainable Procurement Contractor and Subcontractor Compliance

As part of Sustainable Procurement Policy implementation, the City has developed a Measurement and Reporting Framework and a Diversity Spend Reporting Framework to track year-over-year changes and progress in meeting policy outcomes, which can be found in Attachments 3 and 4. Some examples of metrics that may be tracked include:

- Value of contracts with Indigenous businesses
- Number of contracts with diverse businesses
- Number of equity-deserving group employment hours from contractors and subcontractors
- Number of non-compliance instances with the Supplier Code of Conduct that have been reported and confirmed
- Value of contracts that required GHG emissions reporting

Specific indicators have been set for each guiding principle and these will be monitored to track the City's progress and ensure minimum requirements are met. The indicators measure outcomes related to ethical, environmental, Indigenous and social value considerations included in the City's contracts.

Within its existing procurement system, the City can track and report on the use of sustainable procurement menu items in its contracts. Processes are being put in place to collect, monitor and analyze the regular contractor reporting that is required when sustainable contract requirements are included.

Administration is also exploring the potential of third-party tools/systems available to aid in the collection of sustainable procurement reporting information.

Contractor Audit Provisions

All City standard contract templates include audit provisions that allow the City to audit all records relating to the contract including timesheets, subcontracts and invoices.

For contracts that include sustainable procurement requirements, contractors are required to report regularly on their compliance with contract requirements, including any sustainable procurement commitments. Contracts include audit provisions allowing the City to audit payroll data, anonymized self-identification data, information provided in the monthly reports, etc., where applicable to the specific sustainable procurement requirement included in the contract.

If a contractor does not comply with the requirements of a contract or the results of an audit show non-compliance, the City has recourse within the contract. Because a contractor is responsible for subcontractors, any failure by a subcontractor is deemed a failure by the contractor. Examples of recourse available within the contract may include:

- Termination of the contract

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- Indemnification (or making whole) of the City for losses, claims, lawsuits, expenses, etc. arising out of or in consequence of the work. This could include things resulting from a subcontractor's actions or failure to act
- Requesting that a contractor replace a subcontractor, or even specific subcontractor employees
- Involvement in the City's dispute resolution process

The City includes audit provisions in its contracts as a safeguard to ensure that the obligations outlined in the contract are being met. While audits are not routinely conducted, they provide a mechanism to verify contractual obligations are being met, if and when the City chooses to exercise this right, such as if specific concerns were raised in relation to a contract. The City could perform audits on contracts based on a risk-based approach, but this exercise would take additional resources. Administration continues to monitor and assess the approach to auditing contracts.

Contract Management Approaches

City Contract and Project Managers use a wide variety of methods to ensure compliance with contract requirements, including:

- Project kick-off meetings
- Regular check-in meetings
- Tracking of performance obligations
- Site visits and inspections
- Quality control/quality assurance
- Project status reporting
- Reviewing and approving progress claims and invoices
- Managing and resolving claims and disputes

The City has also recently centralized contract management functions, which will allow teams greater consistency in managing, reporting and improving sustainability reviews within contracts.

Evaluate and Score Compliance: Supplier Performance Management

The City's Supplier Performance Management (SPM) program evaluates the performance of contractors and consultants who work with the City. SPM ensures an appropriate level of governance, structure, collaboration and communication is established with contractors working with the City.

A contractor's supplier performance rating will be applied to future procurement opportunities, giving better performing contractors an edge over poorer performing contractors in the bid evaluation process. Unsatisfactory performance may result in a contractor being placed on probation or suspension.

The City recently introduced scoring into the program that reflects a contractor's and their subcontractor's commitment to meeting their sustainable procurement obligations. A summary of SPM evaluation criteria is included in Attachment 5.

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Contractor and Subcontractor Suspensions

Contractors may be placed on probation or suspension for scoring poorly as part of the SPM program. The City is working to expand the reasons that a contractor may be suspended from working with the City, which will be incorporated into a standard, the draft of which is included in Attachment 6. This will provide the City more flexibility to suspend contractors that are not operating in compliance with City contracts or are otherwise exhibiting behaviour the City determines is inappropriate.

Legal and Ethical Concerns

At times, concerns about conduct of City contractors or subcontractors are raised with elected officials or Administration. These concerns can be wide-ranging. Many of these issues may fall within the jurisdiction of other orders of government and regulatory agencies. Information about these concerns should be provided to the applicable authority. Complainants may also choose to inform the City, especially if it relates to a City contract. However, other agencies and/or orders of government have investigative and enforcement abilities to act on complaints that the City may not have. The City developed a guideline for complaints regarding City contractors and subcontractors (Attachment 7).

Compliance with Sustainable Procurement Policy

- 90 per cent of competitive procurements in 2024 (to the end of July) included sustainable benefit criteria. This number has continued to increase from 10 per cent in 2020, 41 per cent in 2021, 78 per cent in 2022 and 80 per cent in 2023.
- For procurements that included sustainable benefit procurement criteria:
 - 17 per cent included social procurement criteria
 - Four per cent included Indigenous socioeconomic criteria
 - 12 per cent included training and apprenticeships criteria
 - 47 per cent included equity employment and training criteria
 - 24 per cent included environmental criteria.
- For contracts that included sustainable benefit contract requirements:
 - 45 per cent included equity and Indigenous employment requirements
 - Nine per cent included social procurement/community development requirements
 - 18 per cent included skills and training requirements
 - 28 per cent included environmental requirements
- Reporting is a requirement whenever sustainable contract requirements are included in a contract. The reporting will be collected and reviewed. Any concerns with compliance will be dealt with using mechanisms in the contract.
- Sustainable contract requirements were introduced in August 2023, so only contracts procured after this time would include such requirements.
- At this time, since the inclusion of reporting is still new in contracts, no reporting is due yet on any contracts that include sustainable contract requirements.

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Efficacy of Policy on Existing Contracts

The City has robust policies and procedures in place that ensure contractor and subcontractor obligations are being met, as contracts are where the City can have a direct influence on achieving its policy objectives and outcomes. Through the City's annual delegation of authority report (May 3, 2024, Financial and Corporate Services report FCS02345, Annual Delegation of Authority), which will continue to include updates on the Sustainable Procurement Policy implementation, the City is showing consistent and measurable success. As the program evolves, the City will continue to review, revise and enhance program elements to ensure continued success.

To benchmark and keep informed of industry best practice, the City is a member of the Canadian Collaboration for Sustainable Procurement (CCSP). The CCSP is a member-based network of Canadian public-sector institutions working together to align their spending with their values and commitments on sustainability. The members share information and create tools to address green, social and ethical opportunities and risks in their supply chain. CCSP's Annual Report on the State of Sustainable Public Procurement in Canada highlights the country's latest sustainable procurement trends, which benchmarks members, lists member program development updates, and shares success stories around social and Indigenous procurement, green infrastructure, innovative training and communication programs, zero-waste and circular economy initiatives. Using information provided by the network to compare the City to other organizations, Edmonton would rank third out of the 23 government members and fifth out of the 37 total members of CCSP based on the following areas: strategy and action plan, staffing and resources, policies, high impact procurement list, procedures, tools, training and engagement, measurement and reporting, contractor engagement, and leadership and collaboration.

In addition, the City is currently working with Buy Social Canada. Buy Social Canada is a leading nonprofit social enterprise and an industry leader in the country when it comes to implementation of Social and Indigenous Procurement Programs.

As previously shared in the February 21, 2024, Integrated Infrastructure Services report IIS02122, Major Capital Project Update, Administration initiated an independent major capital project review to evaluate levels of oversight and project management practices. Two external parties, the University of Alberta Construction Innovation Centre and Stantec Consulting Ltd., completed the review. This approach paired an industry consultant with international experience and academic experts to offer insights into best practice application. The review concluded that Administration has an established major capital infrastructure project management framework that is aligned with industry best practices.

Community Insight

Administration continuously engages with various vendor communities through different means such as "Selling to the City" sessions, direct interactions with equity-deserving communities, and networking events hosted by the City or other organizations. Administration uses these engagement opportunities to connect directly with the groups that the policy aims to support, listen to their concerns, and take appropriate action if any concerning behaviour is

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communicated. For example, the City recently hosted its inaugural social procurement networking event called "Purchase with Purpose." This event created a space that facilitated connections between diverse and Indigenous-owned businesses and buyers in and around Edmonton, including the City of Edmonton purchasers. During the event, businesses had the opportunity to meet directly with Administration, including senior leadership, ask questions, and discuss their concerns, which may include barriers that prevent them from participating equitably in City procurement. These barriers may include limited access to capital, difficulty obtaining information about procurement processes, having relatively fewer resources and less experience to contribute to participating in procurement processes, and bias and racism.

GBA+

Administration has applied GBA+ to the review of the City's procurement processes, leading to further policy development in social procurement and Indigenous procurement. Policy C556C is focused on four purchase outcomes to integrate community social value: employment, skills and training, social value supply chain and community development. Policy C556C also uses a variety of social benefit criteria that include many GBA+ considerations. Work in support of the Policy is described above.

As Administration reviews its existing policies, procedures, standards and practices, and creates new ones, GBA+ components will continue to be evaluated. Administration intends to reinforce the values and commitments set by Council by working with contractors aligned to those values.

Environment and Climate Review

This report was reviewed for environment and climate risks. The environmental risks and opportunities summarized below were identified using City-developed environment and climate screening criteria. Sustainable Procurement Policy C556C:

- Provides a framework for purchasing activities to create positive environmental impacts, while maintaining an open, fair and transparent procurement process.
- This ongoing work incorporates environmental criteria into a high volume of competitive procurements to encourage additional efforts related to waste reduction, pollution reduction, water-use reduction, energy efficiency and emissions management.

Attachments

1. Supplier Code of Conduct
2. Sustainable Procurement Menu Example
3. Measurement and Reporting Framework
4. Diversity Spend Reporting Framework
5. Supplier Performance Management Evaluation Criteria Summary
6. DRAFT - Probation and Suspension Standard
7. Complaints Regarding City Contractors and Subcontractors