



Strategic Procurement Update: Co-Operative Purchasing

Item 7B

November 2, 2023

Building Investment, Finance and Audit Committee

Report: BIFAC:2023-113

To: Building Investment, Finance and Audit Committee
("BIFAC")

From: Chief Financial Officer & Treasurer and General Counsel
& Corporate Secretary

Date: October 16, 2023

PURPOSE:

The purpose of this report is to provide the Building Investment, Finance and Audit Committee ("BIFAC") with details as well as proposed next steps, for TCHC to participate in four co-operative purchasing methods:

- buying groups;
- "piggybacking";
- vendors of record; and
- joint procurements.

RECOMMENDATIONS:

It is recommended that the BIFAC receive this report for information.

REASONS FOR RECOMMENDATIONS:

Co-operative purchasing involves accessing competitive procurements undertaken by other public bodies and buying groups to benefit from their volume purchases and efficient procurement processes.

TCHC has made some use of co-operative purchasing in the past, but in general it has been viewed more as an adjunct process rather than being equivalent to using a competitive process undertaken directly by TCHC. As

a result, there has not been a direction to use co-operative purchasing to maximum advantage.

Attachment 1 outlines the work by the Strategic Procurement Unit and Legal Services to reinstate usage of buying groups and establish formal relationships as a client with buying groups Ontario Education Collaborative Marketplace (“OECM”) and Kinetic GPO.

SIGNATURE:

“Lily Chen”

Lily Chen
Chief Financial Officer & Treasurer

and

“Darragh Meagher”

Darragh Meagher
General Counsel & Corporate Secretary

ATTACHMENT:

1. Briefing Note: Recent Steps Undertaken to Facilitate Co-Operative Purchasing

STAFF CONTACTS:

Joanne Bourne-James, Manager, Sourcing (Strategic Procurement)
416-981-4056
Joanne.Bourne-James@torontohousing.ca

Robert McNutt, Legal Counsel
416-981-5586
Robert.Mcnutt@torontohousing.ca

Rajesh Singh, Manager, Sourcing (Strategic Procurement)
416-981-6962
Rajesh.Singh@torontohousing.ca

Ted Millward, Legal Counsel
416-981-4136
Ted.Millward@torontohousing.ca

Item 7B – Strategic Procurement Update: Co-Operative Purchasing
Public BIFAC Meeting – November 2, 2023
Report #: BIFAC:2023-113
Attachment 1

PURPOSE:

To provide an update on work by SPU (Strategic Procurement Unit) and Legal Services, as well as recommendations and proposed next steps, in order for TCHC to more fully participate in co-operative purchasing initiatives.

Co-operative purchasing involves accessing competitive procurements undertaken by other public bodies and buying groups to benefit from their volume purchases and efficient procurement processes. For purposes of this briefing note, co-operative purchasing encompasses the following four purchasing methods:

- **buying groups** (e.g. Kinetic GPO and OEMC)
- **"piggybacking"** (esp. upon City of Toronto contracts)
- **vendors of record** ("VOR") (e.g. provincial VORs including Ministry of Public and Business Service Delivery/Supply Ontario's list of qualified vendors)
- **joint procurements**

Recent Steps Undertaken to Facilitate Co-Operative Purchasing:

- Obtained legal clarification about piggybacking
TCHC obtained an external legal opinion to clarify and suggest options to facilitate piggybacking in a way that complies with trade treaty requirements. The advice confirmed past concerns that TCHC's prior practice may not meet these requirements, but that steps could be taken to reduce the risk of non-compliance, such as ensuring that TCHC is specifically named and its estimated quantities included in the City's procurement. This advice has clarified the legal uncertainty regarding piggybacking.
- Entered into discussions with the City of Toronto's procurement and legal staff
TCHC shared the legal advice with the City and engaged in multiple discussions with City staff to ensure that the City procurement process enabling piggybacking to encompass the trade treaty compliance recommendations. Strategic Procurement Unit ("SPU") staff now meet regularly as part of a City of Toronto working group that includes other

agencies and commissions that, going forward, will help ensure that TCHC is notified in advance of potential procurements undertaken by the City of Toronto. Piggybacking will require TCHC being listed and its estimated quantities identified, in the tender documents issued by the City or other issuing organization.

This framework will facilitate piggybacking prospectively on new City of Toronto procurements going forward once City legal counsel completes its review and updates its procurement templates.

SPU does not anticipate using piggybacking on pre-existing City procurements that have not followed this new protocol, considering the legal advice obtained regarding compliance with the treaties. Consideration of any exceptions would be subject to a risk analysis and consultation with the Legal Services Division (“LSD”).

- Held multiple discussions with buying groups (Ontario Education Collaborative Marketplace (“OECM”) and Kinetic GPO)

As a result of multiple meetings with OECM and Kinetic GPO staff, SPU now has a much more in-depth understanding of the mechanics of these organizations and a better assessment of their compliance with procurement and trade treaty requirements. These organizations have undertaken efforts to ensure their competitive procurements comply with public procurement and trade treaty requirements.

Based on these discussion and review by TCHC staff, the assessment is that their procurement processes sufficiently meet the relevant requirements and/or the risk of a challenge for non-compliance is low. It should be noted that, many other public sector organizations, including the City of Toronto, currently participate in these groups and rely on them as compliant procurement opportunities.

Therefore, subject to certain formalities (e.g., signing a participation agreement in the case of Kinetic GPO), and identifying specifically which types of supply contracts might be relevant to TCHC, there is no major barrier to establishing relationships with these organizations and sourcing from their suppliers.

- Researched and explored the possibility of taking advantage of Supply Ontario Vendors of Record (“VOR”)

SPU consulted Supply Ontario and confirmed TCHC's status as an eligible entity to participate as a member as well as clarified the process for doing so. While additional exploration about process requirements may still be required, it does not appear that there are significant hurdles to taking advantage of VORs in future purchasing by TCHC. The City of Toronto also currently participates in Supply Chain Ontario VORs.

- Reviewed and considered TCHC's current procurement procedures SPU has concluded that a gap exists in TCHC's procurement procedures regarding co-operative purchasing that should be addressed directly by a new procedure to ensure that co-operative purchasing is specifically recognized as an authorized method of procurement and procedures governing its utilization are developed.

NEXT STEPS:

A. Buying Groups

1. Establish formal relationships as a client with buying groups OECM and Kinetic GPO. Neither buying group requires that procuring entities pay a fee to the buying group to register as a participant or when a purchase is made from a vendor established by the buying group. OECM does not enter into formal contracts but merely requires staff to enroll as contacts for the client organization. Kinetic GPO requires signing a participation agreement and onboarding. Key elements of membership in the Kinetic GPO participation agreement include:

- allows access to Kinetic's suite of vendor contracts from which goods and services can be purchased;
- confirms that no membership fees or purchase commitments apply.
- positions Kinetic as compliant with CFTA procurement rules;
- provides a right of members to an audit of all records related to a procurement made by Kinetic GPO;
- provides automatic membership renewal every December 31, subject to the right of either party to terminate upon 30 days' notice; and
- requires members to comply with terms of its vendor contracts and excludes any liability for any damages incurred by members.

Notice of participation in the buying groups on TCHC's website is also required by the trade treaties. In addition, TCHC should request that it be listed in the buying group's tender documents to conform to trade treaty requirements. Going forward, SPU will also investigate and consider the potential for joining other appropriate buying groups that meet applicable TCHC procurement and trade treaty requirements.

2. SPU will conduct reviews of OECM/Kinetic GPO contracts that might be applicable to TCHCs business needs and, in consultation with business units, will negotiate contracts with existing vendors when this is considered to be in the best interest of TCHC. When appropriate this may include a second stage competitive process involving buying group vendors. It is recommended that TCHC contract templates be used, wherever possible, instead of buying group templates, to protect TCHC's interests and ensure that the contract terms are consistent with other TCHC vendors¹.

SPU should develop standard procedures for using buying groups.

B. Piggybacking

3. Resume the practice of piggybacking on City of Toronto procurements when appropriate and in the best interest of TCHC, once the City has updated their template documents.

SPU will continue to coordinate with the City to identify procurements that would benefit TCHC, and ensure that in those cases, TCHC is named and its estimated quantities are included in the tender documents. Going forward, SPU will also investigate and consider the potential for additional piggybacking opportunities on contracts of other relevant public sector organizations that meet applicable TCHC procurement and trade treaty requirements.

C. VORs

4. SPU will continue to work with Supply Ontario to identify opportunities to benefit from the vendors that have been pre-qualified by the Province of Ontario. Going forward, SPU will also investigate and

¹ Using buying group contract templates would be exceptional and would be subject to review and approval by the Business Unit in consultation with LSD.

consider the potential for participating in other relevant VOR arrangements that meet applicable TCHC procurement and trade treaty requirements, e.g. municipal, federal and other VORs.

D. Joint Procurements

5. No change – continue to identify opportunities for joint procurements with other public sector bodies where that would provide value for money and economies of scale. It is not anticipated that the use of joint procurements will change significantly going forward, however, given their practical limitations identified previously.

E. Governance

6. SPU, in consultation with LSD, to develop a new procurement procedure governing co-operative purchasing, and existing procurement procedures be amended as necessary to recognize and facilitate co-operative purchasing.

In the interim, pending these changes to the procurement governance procedures and to avoid inconsistency with current procedures, co-operative purchasing by way of buying groups, piggybacking and VORs should be approved as a direct award where it can be established that the purchase falls within one of the existing direct award categories (e.g. because it presents a sound business case [s. 4.3(a)(xv)] or it is necessary for an unforeseen emergency [s. 4.3(a)(i)]).

With each individual co-operative purchasing opportunity that TCHC considers, both in the interim and after procedures are updated, an appropriate degree of due diligence must be exercised to ensure the issuing entity met applicable trade treaty and TCHC procurement requirements. Any decision to engage in a co-operative purchase should also involve comparing pricing, administrative time and outcomes to conducting a TCHC procurement, and confirmation that co-operative purchasing will yield equivalent or superior value for money.

The below table summarizes the impact and benefits that reinstating the use of buying groups will bring to TCHC.

Co-operative Purchasing Initiative	Agency	Benefits (Economic Advantages)
<ul style="list-style-type: none"> Buying groups 	Kinetic GPO and OECM	<ul style="list-style-type: none"> Leveraging volume purchases Better pricing Efficient procurement processes Cost savings in terms of staff efforts
<ul style="list-style-type: none"> Piggybacking 	City of Toronto contracts	<ul style="list-style-type: none"> Efficient procurement processes Cost savings in terms of staff efforts
<ul style="list-style-type: none"> Vendors of record (VORs) 	Supply Ontario	<ul style="list-style-type: none"> Leveraging volume purchases Better pricing Efficient procurement processes Cost savings in terms of staff efforts
<ul style="list-style-type: none"> Joint procurements 	City Of Toronto	<ul style="list-style-type: none"> Leveraging volume purchases

BACKGROUND:

Past use of co-operative purchasing

Part of the reason for the limited use of co-operative purchasing is that co-operative purchasing relies upon a third party's competitive procurement process. Hence, it places an onus and risk on participants to satisfy themselves that the third party's process complied with procurement and trade treaty requirements, principally the *Canadian Free Trade Agreement* and *EU-Canada Comprehensive Economic and Trade Agreement*.

In addition, unlike the City of Toronto, TCHC's procurement policies and procedures do not provide clear direction about using co-operative purchasing.

Nonetheless, TCHC has participated in some co-operative purchasing in the past, namely:

Buying groups: TCHC has participated in at least one buying group, OECM², primarily to purchase office and janitorial supplies. These purchases were approved as direct awards and typically used OECM's standard contract template. Despite these occasional purchases, there has not been clear strategic direction to engage with buying groups to assess their procurement and trade treaty compliance, and to review the potential benefits and savings from using their supplier networks.

Piggybacking: TCHC has engaged in "piggybacking", usually on City of Toronto contracts primarily involving IT procurements, since piggybacking was recognized under TCHC's procurement procedures as an appropriate direct award justification³. It authorized TCHC to purchase goods and services where another public entity conducted a public procurement that allowed TCHC *to purchase the goods and services under the same terms and conditions*. However, while the City procurement documents contemplated other agencies participating by way of an 'adoption agreement', TCHC was not specifically identified in the RFX process as a potential buyer and its estimated quantities were not included. Also, there was not a coordinated process for informing TCHC about upcoming City procurements.

As a result of verbal advice received from external legal counsel which raised concerns that this method of piggybacking used by TCHC may not be in compliance with applicable provisions of the trade treaties, piggybacking was removed by SPU as a direct award justification. SPU also made the decision to temporarily cease using buying groups out of caution, in order to consider its options and risks. Consequently, for several years, neither buying groups nor piggybacking have been utilized in TCHC purchasing.

VORs: It does not appear that TCHC has previously made efforts to take advantage of Supply Ontario VORs, unlike a number of other public entities in the municipal public sector. VORs could be beneficial in sourcing vendors for ITS and corporate services business needs⁴.

² OECM is a not-for-profit organization that competitively sources suppliers to provide goods and services that allows its customers who are typically in the education and public sector, to benefit from its bulk sourcing. Two SPU staff are enrolled as the designated contacts for TCHC. OECM's clients include many public sector entities, including the City of Toronto.

³ TCHC Procurement Procedures, section 4.3(a), paragraph xiii.

⁴ VORs operate in a manner that is similar to a roster, and typically would require a second stage process such as a competitive tender or solicitation.

Joint procurement: TCHC has, on occasion, participated in joint procurements with the City of Toronto and more recently with the Toronto Seniors Housing Corporation. Joint procurements are characterized by purchasing parties that are jointly involved in developing and approving specifications and documents. These are not commonly used by TCHC, in part because they typically take much longer to formalize.

Definitions

"Buying Group" is a group of two or more members that combines the purchasing requirements and activities of the members of the group into one joint procurement process. Buying Group procurement is done in compliance with applicable provisions of the Canadian Free Trade Agreement (CFTA) and Comprehensive Economic and Trade Agreement (CETA). A Buying Group may be considered the plural of a Public Body, given that the buying group may consist of one or more Public Body members. By the nature of how it is formed, the Buying Group acts as a unified "purchaser" that provides the service of streamlining the procurement process by developing RFX's for competitive solicitations that meet or exceed Public Body member requirements. Please note a "Buying Group" is also referred to as a Group Purchasing Organization (GPO).

"Cooperative Purchasing" means a competitive procurement process that is conducted by one public body or buying group on behalf of one or more public bodies in order to obtain the benefits of volume purchases and administrative efficiency.

"Joint Procurement" means a procurement conducted by, or on behalf of, one (1) or more public entities that have combined and/or standardized their respective requirements. The participating organizations make an advance commitment to use the resultant Supplier.

"Piggyback" and "Piggybacking" refers to a situation where an organization leverages an existing Public Body's procurement. It requires that the original solicitation document specifically provided for other Public Bodies to leverage the contract and for trade treaty purposes these Public Bodies should be named and their estimated quantities should be included.

"Public Body" means any government or government agency, municipality or local board, commission or non-profit corporation carrying out a public function, and includes any corporation of which the City is a shareholder.

"Vendor of Record (VOR)" arrangement is a solicitation issued and awarded by a Public Body that authorizes one or more qualified suppliers to provide goods/services for a defined period of time based on terms and conditions, including pricing, as set out in the VOR agreement. Most

commonly the City uses VORs from the Province of Ontario and the Government of Canada. The VOR allows other public bodies (that meet certain criteria) such as the City to "piggyback" on existing VOR arrangements.