
Corporate Contracting

References: *Municipal Government Act, RSA 2000, c M-26*
Bylaw 21-2015 (Chief Commissioner's Bylaw)

Cross-References: Policy GOV-002-022 (*Entering into Contracts with Litigants*)
Directive GOV-002-035D (*Contract Signing and Financial Spending Authority*)
Directive GOV-002-043D (*Electronic Signatures and Approvals*)
Procedure GOV-002-043 (*Electronic Signatures and Approvals*)

Directive Statement

The County is committed to ensuring its contracting processes and standards are consistent and transparent, provide a robust system of internal controls, and balance efficiency and effectiveness of business operations with legal and other risks.

Purpose

The purpose of this Directive is to provide the governance framework for contracting by the County to ensure the County: complies with applicable law; adheres to consistent processes and standards; and mitigates risk resulting from substandard Contract Processes and related activities, including reputational damage, legal challenges, increased costs, and inefficient use of resources.

Definitions

"Conflict of Interest" means any situation or circumstance where there is a conflict or incompatibility between personal interest and professional responsibility. A Conflict of Interest can arise where: the personal interests of a person impair their impartiality in or ability to fulfil their professional responsibility; or the person would be able to pursue their personal interest based on information acquired while fulfilling their professional responsibility.

"Contract" means a legally enforceable agreement between two or more legal entities (which includes but is not limited to corporations, municipalities, individuals, and societies) whereby they impose obligations and they agree to do or not do certain things. Examples of Contracts include agreements related to the following things:

- purchases of goods, services, or construction;
- sales of personal property or land;
- leases, licences, rentals, and reciprocal use of land, buildings (or portions of buildings), or personal property;
- acquisitions of infrastructure and municipal improvements pursuant to part 17 of the *Municipal Government Act*;
- grant funding or revenue generation;
- instructors for programs;

- information sharing;
- assignments and consents; and
- amending an existing agreement.

"Contract Process" means the entire lifecycle of Contract. The Contract Process commences upon the identification of the need for a Contract by a Department and ends upon the completion of the Contract close-out process.

"Contract Process Records" means the documentation that supports a Contract Process, and includes but is not limited to the following:

- the Contract;
- any subsequent Contract that amends the original Contract and any change order issued under the original Contract;
- notices issued under the Contract, including a change of address notice, a rectification notice or other notice related to a breach of Contract, a notice to proceed with construction, a term extension notice letter, and a next phase of deliverables notice letter;
- documentation required by or with respect to a requirement of the Contract, including certificates of insurance, WCB clearance letters, statutory declarations, security (such as surety bonds), construction completion certificates, and final acceptance certificates;
- notes of verbal discussions, meetings, and written communications with respect to lack of performance under, compliance with, or clarification of the Contract;
- performance evaluation documentation; and
- any other relevant documentation related to the performance under, compliance with, or clarification of the Contract.

"Contracting Department" means the Department responsible for the Contract based on the delegated authority for the Contract pursuant to Bylaw 21-2015 (*Chief Commissioner's Bylaw*).

"County Non-Standard Form Contract" means a form of Contract that is approved by LLS Legal Services for a particular situation for use by a Department. County Non-Standard Form Contracts are typically created by LLS Legal Services on an *ad hoc* basis and are not designed to be a template for future use by a Department.

"County Standard Form Contract" means a form of Contract that is approved by LLS Legal Services as a template for use by a Department. County Standard Form Contracts are typically created by LLS Legal Services to facilitate efficiency in contracting situations that have significant similarities and frequency of occurrence. For clarity, the County's standard form purchase order is a County Standard Form Contract.

"External Form Contract" means a form of Contract that is prepared by a legal entity other than the County. An External Form Contract is often referred to as a third-party Contract. An External Form Contract is not approved by LLS Legal Services as a template for use by a Department nor for a particular situation for use by a Department.

"Legal Review Matrix" means the LLS document that sets out the criteria used to determine whether a legal review by LLS Legal Services is required for a County Standard Form Contract or an External Form Contract that is a purchase agreement or a Purchase Order.

"Purchase Order" means a purchase order issued or that will be issued by the County for the purchase of goods or services. For clarity and for purposes of interpretation of this Directive:

- a Purchase Order is a Contract; and

- a purchase order that is used as a tool to facilitate payment under an existing Contract is not included in this definition of 'Purchase Order'.

"Required Terms" means the following terms and conditions of a Contract:

- the Contract term, including identifying the effective date, the initial term and any extension or renewal options, and the expiration date or process;
- a detailed description of the goods, services, or construction to be provided;
- pricing information; and
- performance measures.

Guidelines

1. Application

- 1.1 This Directive applies to all Contracts and to all County employees who participate in Contract Processes, with the exception of Contracts related to the hiring and compensating of County employees as well as any Contracts with County employees related to or arising due to their employment.

2. Form and Party Requirements

- 2.1 *No Verbal Contracts.* County employees are prohibited from entering into verbal Contracts on behalf of the County. For clarity, this includes verbal communication that would bind the County with respect to amending or modifying an existing Contract.
- 2.2 *Form and Requirements of Written Contracts.*
- (a) *Written Form.* All Contracts must be in written form, regardless of whether they are required to be signed by the parties. All Contracts must be in the particular written form as prescribed under this Directive.
- (b) *County Form Preferred.* Whenever possible and provided there is not a compelling reason to do otherwise, the County should contract using a County Standard Form Contract or a County Non-Standard Form Contract rather than using an External Form Contract.
- (c) *Required Terms.* A Contract that is for the purchase of goods, services, or construction by the County must include the Required Terms.
- (d) *Purchase Order.* The County may only contract using a County Standard Form Contract that is a Purchase Order when the following requirements are satisfied:
- no additions, amendments, or deletions to the standard terms and conditions of the Purchase Order are desired or required;
 - the anticipated purchase value is less than \$75,000.00;
 - the purchase is of goods or services (not construction);
 - the purchase is not of professional services that would typically necessitate the supplier having professional liability insurance (such as engineering services);
 - the purchase is for a one time order of goods or one specific purchase of services with no ongoing service needs or commitments;
 - the main deliverable being purchased is not intellectual property;
 - the purchase is not for a high profile project having political or media sensitivity;

- (viii) there is not a high likelihood that the County will experience problems or disruption that cannot be adequately mitigated if performance of obligations by the supplier is disrupted;
- (ix) the purchase will not result in an unusually high likelihood or potential personal injury or death during performance of obligations by the supplier;
- (x) the purchase will not result in an unusually high likelihood that the supplier has the potential to cause significant financial loss to the County (both direct and indirect) during performance of obligations;
- (xi) the purchase does not involve persons under the age of 18 in any way;
- (xii) the supplier is not a non-resident providing services that require border crossing by the supplier or the supplier's personnel; and
- (xiii) a legal review of the Purchase Order is not required in accordance with the current version of the Legal Review Matrix.

2.3 *Parties to Contract.*

- (a) *County Name.* The County's name on all Contracts must be "Strathcona County". Contracts must not be in or include the name of any County department, branch, committee, or other unincorporated entity.
- (b) *Other Party Name.* The name of the other party on a Contract must be the legal name of that other party and must be included in the Contract in the appropriate form based on the type of legal entity.
- (c) *Other Party Restrictions.* The other party to a Contract must: (i) be a valid and subsisting legal entity (as evidenced by a corporate search conducted by or on behalf of LLS if applicable); and (ii) not be a legal entity with whom the County is prohibited from contracting pursuant to Policy GOV-002-022 (*Entering into Contracts with Litigants*).

3. Content Review

3.1 *Required Content Review.* A content review by the Contracting Department is required for all Contracts.

3.2 *Focus of Required Content Review.* In conducting a content review for a Contract, the Contracting Department must consider and affirm that:

- (a) the Contract is in the best interests of the County;
- (b) the Contract complies with applicable law (including the *Municipal Government Act* and County bylaws) and County policies, directives, and procedures (and any questions with respect to compliance have been submitted to LLS Legal Services);
- (c) the business terms of the Contract are acceptable to the Contracting Department and other impacted Departments (as applicable);
- (d) the Contract includes the Required Terms (if applicable);
- (e) the obligations of the County and the other party in the Contract are clearly described and not ambiguous; and
- (f) the County will be able to comply with its obligations under the Contract.

3.3 *Arranging for Required Content Review.* The Contracting Department must arrange for a content review of the Contract to be conducted by appropriate County employees within the Contracting Department and by appropriate County employees within other Departments that will be impacted by or involved with the Contract.

- 3.4 *Timing of Required Content Review.* The Contracting Department must arrange for a content review of the Contract as soon as is reasonably possible in the Contract Process. The content review must be completed before the earliest of:
- (a) the issuance of a Purchase Order by the County or the execution of the Contract by either the County or the other party;
 - (b) the issuance to the market or to the invited participants of the solicitation document for the procurement process for the Contract (if applicable); or
 - (c) the legal review by LLS Legal Services (if applicable).

4. Legal Review

- 4.1 *Required Legal Review.* A legal review by LLS Legal Services of a Contract is required as follows:

- (a) *County Standard Form Contracts.*
 - (i) *Purchase Agreements.* Whether a legal review is required for a County Standard Form Contract that is a purchase agreement is to be determined in accordance with the current version of the Legal Review Matrix.
 - (ii) *Other Agreements.* A legal review of a County Standard Form Contract that is not a purchase agreement is required only if there are changes made to the template by a Department (other than those changes a Department is expressly authorized to make based on the instructions and guidelines for use of that template).
- (b) *County Non-Standard Form Contracts.* A legal review is required for all County Non-Standard Form Contracts unless there is an approved exception from LLS Legal Services.
- (c) *External Form Contracts.*
 - (i) *Purchase Agreements.* Whether a legal review is required for an External Form Contract that is a purchase agreement is to be determined in accordance with the current version of the Legal Review Matrix.
 - (ii) *Other Agreements.* A legal review is required for all External Form Contracts that are not a purchase agreement unless there is an approved exception from LLS Legal Services.

- 4.2 *Focus of Required Legal Review.* If a legal review of a Contract is required under this Directive, then in conducting the legal review LLS Legal Services will identify any non-compliance with legal requirements and legal risks and suggest mitigating strategies to help the Contracting Department make a fully informed decision prior to execution of the Contract.

- 4.3 *Arranging for Required Legal Review.* If a legal review of a Contract is required under this Directive, then the Contracting Department must arrange for the legal review by submitting a request to LLS Legal Services. As part of that request, the Contracting Department must provide the Contract in a completed form and in its entirety including all schedules and documents incorporated by reference (or as close to the completed form as possible and all schedules and documents available in the situation of a Contract for which there is a procurement process).

- 4.4 *Timing of Required Legal Review.* If a legal review of a Contract is required under this Directive, then the Contracting Department must arrange for the legal review as

soon as is reasonably possible in the Contract Process. The legal review must be completed before the earlier of:

- (a) the execution of the Contract by either the County or the other party; or
- (b) the issuance to the market or to the invited participants of the solicitation document for the procurement process for the Contract (if applicable).

5. Content and Form Approval

5.1 After the content review and legal review (if applicable) of a Contract are completed, the Contracting Department must approve the content and form of the Contract. In so approving, the Contracting Department is confirming that:

- (a) with respect to the content:
 - (i) the Contract conforms to, complies with, and meets the requirements set out in section 3.2 (Focus of Required Content Review);
 - (ii) if a legal review was conducted if it was required under this Directive and any issues identified during the legal review have been addressed;
 - (iii) any required approvals from other legal entities have been obtained (such as for foreign vendors crossing the Canadian border to deliver goods, services, or construction as required by the Contract); and
 - (iv) any required Council approvals have been obtained; and
- (b) with respect to the form:
 - (i) the County and the other party are correctly named in the Contract;
 - (ii) the other party is a valid and subsisting legal entity;
 - (iii) the other party is not a legal entity with whom the County is prohibited from contracting pursuant to Policy GOV-002-022 (*Entering into Contracts with Litigants*);
 - (iv) all required information is inserted and included;
 - (v) all referenced attachments and schedules have been correctly referenced and included.

5.2 Upon the completion of the content and form approval for a Contract, the Contracting Department must either:

- (a) issue the Purchase Order evidencing the Contract (when the Contract is a Purchase Order) in accordance with County policies, directives, and procedures; or
- (b) proceed with the execution process for the Contract as set out in this Directive.

5.3 Unless otherwise approved by LLS Contract Management, the Contracting Department must ensure that the performance of any of the obligations of either the County or the other party under the Contract do not start until after the Purchase Order is issued or the execution process has been completed as set out in the above section.

5.4 Unless otherwise approved by LLS Contract Management, a Contract must not be changed after the completion of the content and form approval for the Contract and before the completion of the issuance of the Purchase Order or the execution of the Contract.

6. Execution Process

6.1 *Application.* This section applies to Contracts that are signed by the County and the other party. For clarity, this section does not apply to a County Standard Form Contract that is a Purchase Order.

- 6.2 *Form of Execution.*
- (a) *Signatures.* Contracts may be executed by the County and the other party using wet-ink signatures or electronic signatures in accordance with the Directive GOV-002-043D (*Electronic Signatures and Approvals*) and Procedure GOV-002-043 (*Electronic Signatures and Approvals*).
 - (b) *Identifying Information.*
 - (i) *Both County and Other Party.* The name and position of the individual(s) that have signed the Contract for the County and the other party must be identified adjacent to their signature(s).
 - (ii) *County.* If an individual that signs the Contract for the County is signing based on an 'acting' delegation of authority, then the title of that individual must include the word 'acting' and the date of signing by that individual must be identified adjacent to their signature;
 - (c) *Seal.*
 - (i) *Other Party.* The other party is only required to affix its seal to a Contract or provide an affidavit verifying corporate signing authority for the Contract when required either by applicable law or by the other party's constating documents.
 - (ii) *County.* The County is required to affix its seal to a Contract when requested by the other party or when required by applicable law or County policies, directives, and procedures.
- 6.3 *Order of Execution.* Whenever possible and provided there is not a compelling reason to do otherwise, Contracts should be executed by the other party prior to being executed by the County.
- 6.4 *Other Party Execution.* The Contracting Department must facilitate the execution of the Contract by the other party and must ensure that the Contract has been properly executed by the other party, including that the other party has:
- (a) not made any modifications to the Contract since the completion of the content and form approval for a Contract conducted by the Contracting Department under this Directive;
 - (b) caused its representative(s) to sign the Contract;
 - (c) identified the name and title of the individual(s) that has signed the Contract adjacent to their signature(s); and
 - (d) affixed its seal or provided of an affidavit verifying corporate signing authority when required either by applicable law or by the other party's constating documents, unless otherwise directed by LLS Contract Management.
- 6.5 *County Execution.*
- (a) County employees are prohibited from signing Contracts unless they have the requisite authority pursuant to Bylaw 21-2015 (*Chief Commissioner's Bylaw*) and Directive GOV-002-035D (*Contract Signing and Financial Spending Authority*).
 - (b) Before facilitating the execution of the Contract by the County, the Contracting Department must ensure that the County has received all documentation required to be received in advance of execution in accordance with LLS procedures.
 - (c) The Contracting Department must:

- (i) facilitate the execution of the Contract by the County; and
 - (ii) facilitate the return to the other party or receipt by the County of a fully executed copy of the Contract (as applicable).
- (d) As part of facilitating the execution of the Contract by the County, the Contracting Department must ensure:
- (i) no modifications have been made to the Contract since the completion of the content and form approval for a Contract conducted by the Contracting Department under this Directive;
 - (ii) the Contract is signed by individuals(s) with the requisite authority pursuant to Bylaw 21-2015 (*Chief Commissioner's Bylaw*) and Directive GOV-002-035D (*Contract Signing and Financial Spending Authority*);
 - (iii) the name and title of the individual(s) that sign the Contract for the County are identified adjacent to their signature(s);
 - (iv) if an individual that signs the Contract for the County is signing based on an 'acting' delegation of authority, then the title of the individual includes the word "acting" and the date of signing by that individual is identified (if applicable);
 - (v) the County seal has been affixed when requested by the other party or when required by applicable law or County policies, directives, and procedures; and
 - (vi) the date of the Contract is identified and included.

7. Performance Management

- 7.1 The Contracting Department must monitor and manage the performance of, and compliance with, the Contract by the other party in a proactive manner that ensures and supports timely completion and successful performance and that adheres to the approved financial budget (as applicable).
- 7.2 The Contracting Department must exercise its discretion and perform the County's obligations under a Contract in a manner that ensures and supports honest performance and good faith and fair dealings with the other party.
- 7.3 After the issuance of a Purchase Order or the execution of a Contract, the Contracting Department must manage the performance of, and compliance with, the Contract in accordance with the LLS procedure for Contract Process performance and compliance management.

8. Records Management

- 8.1 The Contracting Department must ensure that all Contract Process Records for a Contract Process are up-to-date, complete, and appropriately organized.
- 8.2 After the issuance of a Purchase Order or the execution of a Contract, the Contracting Department must manage the Contract Process Records in accordance with the LLS procedure for Contract Process records management.

9. Close-Out

- 9.1 After the expiration or termination of a Contract, the Contracting Department must perform the Contract close-out process in accordance with the LLS procedure for Contract close-out.

10. Responsibilities of Employees

(a) Responsibilities of All Employees:

- (i) *Maintain Confidentiality of Information.* During and after the term of their employment with the County, County employees must maintain any information acquired as part of their participation in a Contract Process as confidential in accordance with their employment conditions, County policies and directives, and applicable law, and County employees must not use that information for personal benefit.
- (ii) *Attend Training.* Before participation in any part of a Contract Process by the County and otherwise as required by LLS Contract Management, County employees must attend the training prescribed by LLS Contract Management.
- (iii) *Comply and Disclose Non-Compliance.* County employees must comply with this Directive. If a County employee is aware of an anticipated or actual event of non-compliance with this Directive, then that County employee should disclose this to their Director or to the LLS Manager of Contract Management.
- (iv) *Disclose Conflict of Interest.* If a County employee is of the opinion that they have, could have, or could be perceived to have a Conflict of Interest, then that County employee must disclose in writing that Conflict of Interest to their Director or to the LLS Manager of Contract Management.

(b) Responsibilities of Directors:

- (i) *Ensure Compliance.* Directors are responsible to ensure that Contract Processes conducted for their Departments are conducted in accordance with this Directive and that County employees of their Departments adhere to this Directive.
- (ii) *Disclose Non-Compliance.* If a County employee discloses an anticipated or actual event of non-compliance with this Directive to their Director, then the Director should disclose this to the LLS Manager of Contract Management.
- (iii) *Disclose Conflict of Interest.* If a County employee discloses a Conflict of Interest to the Director and the Director still desires that County employee to participate in any part of the Contract Process, then the Director must disclose in writing that Conflict of Interest to the LLS Manager of Contract Management.

(c) Responsibilities of LLS Contract Management

- (i) *Develop and Maintain Procedures.* LLS Contract Management is responsible to develop and maintain detailed procedures related to Contract Processes in order to support this Directive, including procedures related to: Contract Process performance and compliance management; Contract Process records management; and Contract close-out.
- (ii) *Develop, Maintain, and Provide Training, Tools, and Advice.* LLS Contract Management is responsible to develop and provide

appropriate training, tools, and advice to County employees involved in and related to Contract Processes in order to support this Directive.

- (iii) *Monitor Compliance.* LLS Contract Management is responsible to monitor compliance with this Directive by County employees and to report the results of that monitoring to the LLS Director, and other Director(s), Associate Commissioner(s), or the Chief Commissioner (as appropriate).
- (iv) *Assess Disclosure of Non-Compliance.* Upon receipt of disclosure or otherwise becoming aware of an anticipated or actual event of non-compliance with this Directive, the LLS Manager of Contract Management (in consultation with the LLS Director) is responsible to determine whether actions need to be taken to mitigate risk to the County related to the event of non-compliance.
- (v) *Assess Disclosure of Conflict of Interest.* Upon receipt of disclosure of a Conflict of Interest, the LLS Manager of Contract Management (in consultation with the LLS Director) is responsible to determine whether actions need to be taken to mitigate risk to the County related to or to preserve the integrity of the Contract Process.

Directive Record

Next Review Date: January 10, 2026

Policy No: GOV-002-045D

Last Review Date: January 10, 2023

Replaces: N/A

Administrative Review: Legislative and Legal Services

Approved by:

Signed – Darrell Reid
Chief Commissioner

January 10, 2023
Date