

Review of City of Medicine Hat RFP process “CMH21-94 Land & Economic Development Services”

September 29, 2021

Executive Summary

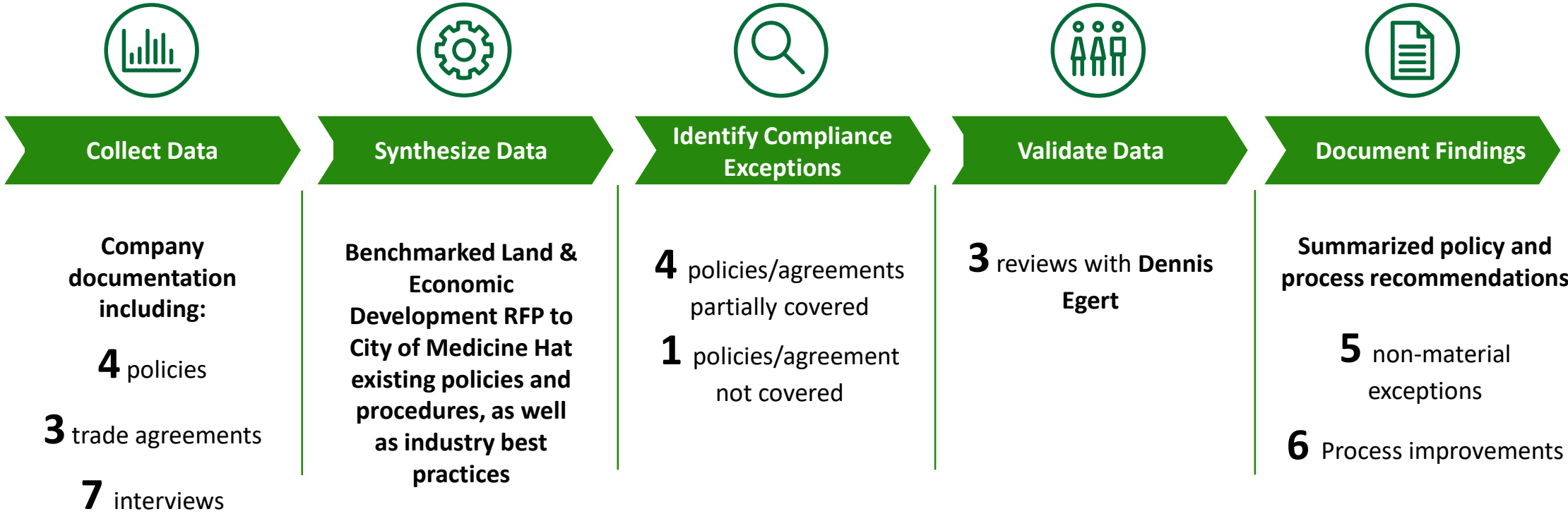
Deloitte was requested by the City of Medicine Hat to review the recent RFP process “CMH21-94 Land & Economic Development Services” and to determine if the process was conducted in accordance with applicable City policies, and generally accepted practices as they relate to procurement in Alberta.

For clarity, this report does not constitute an audit of the City of Medicine Hat’s policies, processes or procedures.

Deloitte’s review of the City of Medicine Hat’s Request for Proposal for “CMH21-94 Land & Economic Development Services” determines that the City of Medicine Hat followed their current policies noting five non-material procedure exceptions for improvement, as well as abided by requirements set out in national and international trade agreements as they relate to Government Procurement.

In addition to the 5 non-material exceptions, this report presents 3 key recommendations to improve current policy and procedures.

Approach



Key Parties and Personnel Interviewed

Name	Title	Role in the RFP	Date Interviewed
Richard Connolly	Manager, Supply Chain	Purchasing Department	September 2 nd , 2021
Don Borrows	Buyer III, Purchasing Services	Purchasing Department	September 2 nd , 2021
Rochelle Pancoast	Managing Director, Strategic Management & Analysis	User Department	September 7 th , 2021
Jamie Freeman	Solicitor, City Solicitor Department	Legal advice	September 8 th , 2021 *The Solicitor was bound by duty to uphold solicitor/client privilege, therefore the meeting was adjourned
MNP	Third party consulting firm	RFP process advice	September 10 th , 2021
Robert Nicolay	City Manager	User Department	September 13 th , 2021
Cal Lenz	Strategic Analysis Executive	User Department	September 13 th , 2021

Policy and Trade Agreements Reviewed

Document reviewed	# of Findings	Comments
Procurement Policy	4 non-material exceptions 3 process improvements	Procurement Policy was followed with 4 non-material exceptions; exceptions and corresponding recommendations outlined on pages 14-17.
Code of Ethics	0 exceptions	No evidence came to light that would suggest the City's Code of Ethics policy was violated by any of the parties involved (parties identified on page 4).
Fraud Policy	n/a	The City of Medicine Hat Fraud Policy is not applicable to the assessment of the RFP process as the fraud policy outlines the procedures to follow when detecting or suspecting fraud, which is out of scope of this report.
Signing Authority	n/a	The RFP process did not reach this stage and is therefore out of scope for this assessment.
NWPTA, CFTA, CETA	1 non-material exception 3 process improvements	NWPTA, CFTA, CETA were followed with 1 non-material exception; exception and corresponding recommendation outlined on pages 22-25.

Exceptions

Of the **75 criteria** reviewed across four policies and three trade agreements, **5 non-material exceptions** to the CoMH RFP process were identified.

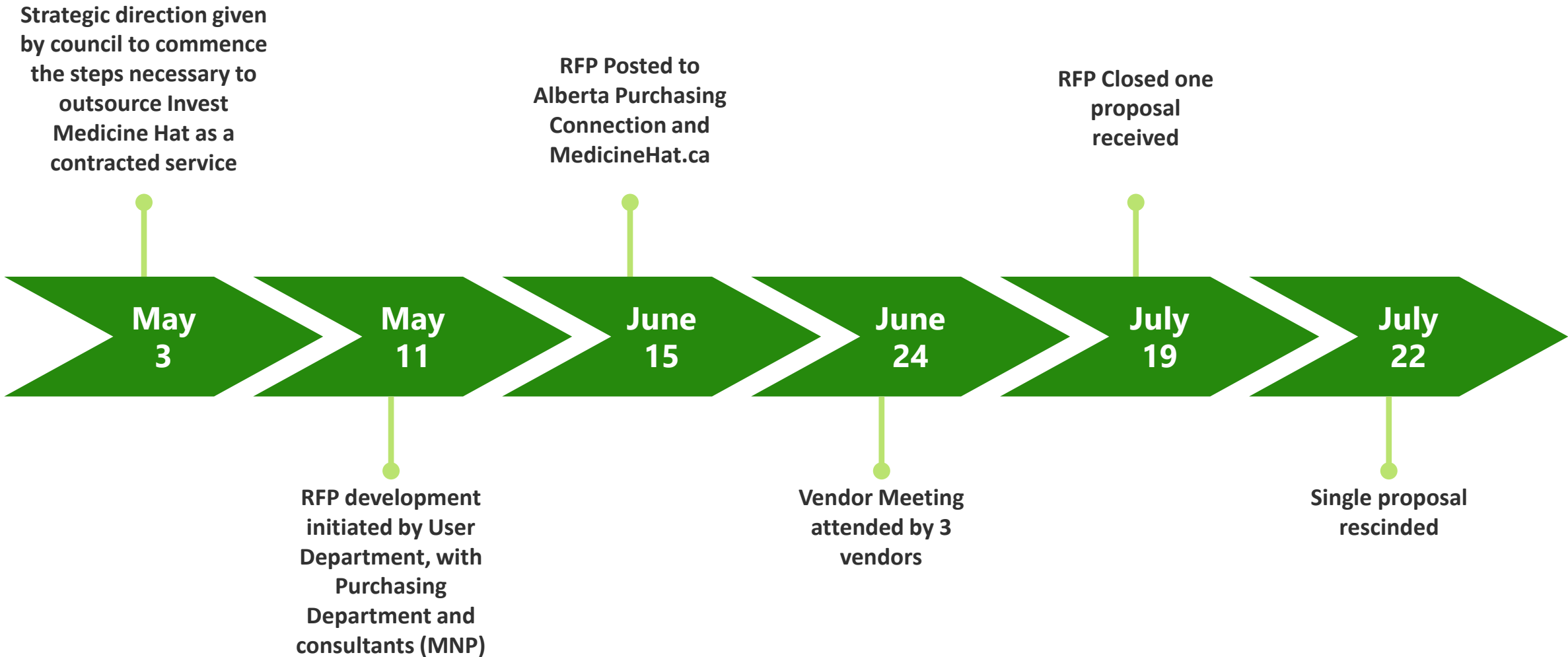
#	Document	Exception Description
1	Procurement Policy	The multi-year contract extension and cancellation clause, as directed in Competitive Bidding 1.03 Multi-Year Contracts, was not included in the contract template attached to RFP.
2	Procurement Policy	User Department was not consistently included in all communications with consulting firm (MNP) through development of RFP process, as per Procedures 3.01 General.
3	Procurement Policy	User Department did not provide a Competitive Bid Requisition form as required in Procedures 3.02 Competitive Bid Documentation.
4	Procurement Policy	Policy outlines in Procedures 3.09 Withdrawal of Bids that non-withdrawal of bids after tender closing time will not be allowed; On the other hand, RFP template permitted withdrawal of bids until the execution of a written agreement.
5	Trade Agreements	Civic address not included in all notices as required in NWPTA (Part C IV Tender Notices), CFTA (Article 506) and CETA (Article 19.6).

Key Recommendations and Benefits to Improve Current Policies and Procedures

	Recommendation	Benefit
Review and Update Current Policies	<ul style="list-style-type: none"> Update policy to reflect generally accepted public procurement practices aligned to free trade agreements and flexible public procurement (e.g. Code of Ethics last updated 1994). 	<ul style="list-style-type: none"> Fit for purpose and aligned policies would better support modern business processes and practices.
Update Contract and RFP Templates	<ul style="list-style-type: none"> Update contract and RFP templates to align with procurement policy and trade agreements (e.g. RFP template refers to hard copy documents). 	<ul style="list-style-type: none"> Aligned documentation and templates would increase compliance of procurement processes.
Introduce Notice Of Planned Procurement (NPP)	<ul style="list-style-type: none"> Post an NPP as soon as a procurement requirement has been identified and budget confirmed for a competitive procurement opportunity. 	<ul style="list-style-type: none"> An NPP would provide transparent, advance notice to all stakeholders of the upcoming business opportunity.

Appendix

RFP Timeline



Procurement Policy

Competitive Bidding

Adherence Definitions

Covered

- Policy or Trade Agreement criteria was adhered to.

Partially Covered

- Part of the Policy or Trade Agreement criteria was adhered to, with improvements recommended.

Not Covered

- Policy or Trade Agreement criteria was not adhered to and improvements recommended.

Procurement Policy, Competitive Bidding - Adherence

Policy	Policy Header	Covered	Partially Covered	Not Covered
General - 1.01	Scope	X		
General - 1.02	Exceptions	X		
General - 1.03	Multi-Year Contracts		X	
Processes - 2.01	Invitation to Tender (ITT)	X		
Processes - 2.02	Request for Proposal (RFP)	X		
Processes - 2.03	Request for Quotation (RFQ)	N/A		
Processes - 2.04	Bidder Pre-Qualification	N/A		
Processes - 2.05	Request for Information (RFI)	N/A		
Processes - 2.06	Request of Interest	N/A		
Procedures - 3.01	General		X	
Procedures - 3.02	Competitive Bid Documentation		X	
Procedures - 3.03	Advertising	X		
Procedures - 3.04	Posting Date and Closing Date	X		
Procedures - 3.05	Distribution of Documents	X		
Procedures - 3.06	Communications During Posting Period	X		

Procurement Policy, Competitive Bidding - Adherence

Policy	Policy Header	Covered	Partially Covered	Not Covered
Procedures - 3.07	Receipt of Bids	X		
Procedures - 3.08	Changes in Submissions Before Closing	X		
Procedures - 3.09	Withdrawal of Bids			X
Procedures - 3.10	Opening of Bids	N/A		
Procedures - 3.11	Disclosure of Bid Information	N/A		
Procedures - 3.12	Communications with Bidders After Tender Opening and Prior to Award	N/A		
Procedures - 3.13	Evaluation of Submissions	N/A		
Procedures - 3.14	Compliance Review	N/A		
Procedures - 3.15	Recommendation and Award	N/A		
Procedures - 3.16	Cancellation of an Open Competition	N/A		
Procedures - 3.17	Post Award Process	N/A		
Procedures - 3.18	Increases/Changes to Contracts	N/A		
Procedures - 3.19	Vendor Performance	N/A		
Bidder Pre-Qualification - 4.01 – 4.02	General & Pre-Qualification Process	N/A		
Request for Information (RFI) and Expressions of Interest (EOI) – 5.01	General	N/A		

Procurement Policy, Competitive Bidding – Observations and Recommendations

Policy	Policy Detail	Adherence	Observation	Recommendation
General - 1.03 – Multi-Year Contracts	“b) Projects that require a contract award that extends beyond an approved budget term must contain a clause that allows for cancellation of the contract if budget approval is not received.”	Partially Covered	Clause was not included in the contract template attached to the RFP.	<ul style="list-style-type: none"> Update contract template.
Procedures – 3.01 – General	“d) When a consultant is involved in a project, the consultant will work with the user department, Purchasing Department and City Solicitor’s Office as required. All communications with consultants will be through the user department.”	Partially Covered	Not all communications with MNP went through user department.	<ul style="list-style-type: none"> User department to be included in all correspondence with consultants working on a proposal. Include this requirement in all kick-off presentations which include a third-party consulting firm.
Procedures – 3.02 – Competitive Bid Documentation	“a) The user department is responsible for providing a Competitive Bid Requisition”	Partially Covered	User department did not provide a Competitive Bid Requisition form.	<ul style="list-style-type: none"> Train user department on Competitive Bid Requisition process.

Procurement Policy, Competitive Bidding – Observations and Recommendations

Policy	Policy Detail	Adherence	Observation	Recommendation
Procedures – 3.03 - Advertising	<p>“a) All competitive bids will be advertised on the City’s website.</p> <p>b) All competitive bids that fall within the NWPTA threshold limits will be advertised on Alberta Purchasing Connection (APC) in addition to the City’s website.”</p>	Covered	Advertising requirements are too broad.	<ul style="list-style-type: none"> • Include duration of the advertising. • Include how far in advance the bid is to be advertised. • Advertise on MERX, given the scale and scope and intent to solicit a proposal from local and non-local vendor community.
Procedures – 3.04 – Posting Date and Closing Date	<p>“b) The closing date should be directly related to the complexity of the project and should allow sufficient time for bidders to submit their best bid/proposal. As a general guideline the following timelines may be considered:</p> <ul style="list-style-type: none"> • ITT’s – a minimum of two (2) weeks • RFP’s – a minimum of three (3) weeks • RFQ’s – a minimum of one (1) week” 	Covered	Closing timelines are described in weeks.	<ul style="list-style-type: none"> • Update closing timelines to days, in alignment with major trade policies. • For procurements subject to the GPA, CETA or CPTPP the closing date for the submission of tenders must not be less than 35 calendar days from the date on which the tender notice is published where tender documents and tenders are both electronic. • Otherwise , minimum tender submission period is 25 days where both tender documents are available, and electronics tenders are accepted electronically.

Procurement Policy, Competitive Bidding – Observations and Recommendations

Policy	Policy Detail	Adherence	Observation	Recommendation
<p>Procedures – 3.05 – Distribution of Documents</p>	<p>“Distribution of Documents a) The Purchasing Department will determine the method to use for the distribution of all competitive bid documentation. b) Hard copy documents will be distributed to Vendors only bidding the project. Sub-contractors and sub-suppliers will not be issued documents. c) In the case of hard copy document distribution, the Purchasing Department will maintain a Bidder List. This list will be circulated to anyone upon request. d) Construction packages will be sent to the Medicine Hat Construction Association and other Construction Associations as deemed appropriate by the Purchasing Department. e) When deemed appropriate, a deposit may be charged for obtaining a tender package. This fee will be non-refundable.”</p>	<p style="text-align: center;">Covered</p>	<p>Policy refers only to distribution of ‘hard copy’ documents.</p>	<ul style="list-style-type: none"> Update policy to refer to electronic documents.

Procurement Policy, Competitive Bidding – Observations and Recommendations

Policy	Policy Detail	Adherence	Observation	Recommendation
<p>Procedures – 3.09 – Withdrawal of Bids</p>	<p>“b) Withdrawal requests received after the tender closing time will not be allowed.”</p>	<p>Not Covered</p>	<p>RFP contradicts current policy: “1.5.5 Withdrawal of Proposals At any time throughout the RFP process until the execution of a written agreement for the provision of the Deliverables, a proponent may withdraw their submitted proposal. To withdraw a proposal prior to the Submission Deadline, a proponent should un-submit the proposal through the “withdrawal submission” function in the bidding system. To withdraw a proposal after the Submission Deadline, a notice of withdrawal, signed by an authorized representative of the proponent, must be sent to the RFP Contact listed in Section 1.2 of this RFP.”.</p>	<ul style="list-style-type: none"> • Confirm preferred policy and language, and update RFP template and/or policies.

Trade Agreements

NWPTA, CFTA, CETA

NWPTA Adherence

Article	Article Header	Covered	Partially Covered	Not Covered
Part B I	Openness	X		
Part B II	Non-Discrimination	X		
Part B III	Non-Circumvention	X		
Part B IV	Transparency	X		
Part B V	Illustrative List	X		
Part C I	Valuation	X		
Part C II	Electronic Tendering	X		
Part C III	Time to Prepare and Submit Tenders	X		
Part C IV	Tender Notices		X	
Part C V	Tender Documentation	X		
Part C VI	Prequalification		N/A	
Part C VII	Evaluation		N/A	
Part C VIII	Contract Award		N/A	
Part C IX	Access to Bid Protest Mechanism for Suppliers		N/A	
Part C X	Exceptions or Qualifications		N/A	

CFTA Adherence

Article	Article Header	Covered	Partially Covered	Not Covered
Article 502	General Principles	X		
Article 503	General Procurement Rules	X		
Article 505	Valuation	X		
Article 506	Tender Notices		X	
Article 507	Conditions for Participation	X		
Article 508	Prequalification of Suppliers	N/A		
Article 509	Technical Specifications and Tender Documentation	X		
Article 510	Modifications, Clarification, or New Information	X		
Article 511	Time Periods	X		
Article 512	Negotiation	X		
Article 513	Limited Tendering	N/A		
Article 514	Electronic Auctions	N/A		
Article 515	Treatment of Tenders and Award of Contracts	N/A		
Article 516	Transparency of Procurement Information	N/A		
Article 517	Disclosure of Information	X		
Article 518	Review Procedures	N/A		

CETA Adherence

Article	Article Header	Covered	Partially Covered	Not Covered
Article 19.4	General principles	X		
Article 19.5	Information on the procurement system	X		
Article 19.6	Notices		X	
Article 19.7	Conditions for participation	X		
Article 19.8	Qualification of suppliers	X		
Article 19.9	Technical specifications and tender documentation	X		
Article 19.10	Time-periods	X		
Article 19.11	Negotiation	X		
Article 19.12	Limited tendering	N/A		
Article 19.13	Electronic auctions	N/A		
Article 19.14	Treatment of tenders and awarding of contracts	N/A		
Article 19.15	Transparency of procurement information	N/A		
Article 19.16	Disclosure of information	X		
Article 19.17	Domestic review procedures	N/A		

NWPTA, CFTA, CETA – Observations and Recommendations

Trade Agreement	Agreement Detail	Adherence	Observation	Recommendation
<p>NWPTA - Part C IV – Tender Notices</p> <p>CFTA - Article 506 – Tender Notices</p> <p>CETA - Article 19.6 - Notices</p>	<p>“Each tender notice must include: (a) the name, address and contact information of the procuring entity”</p> <p>“Each tender notice shall include: (a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;”</p> <p>“3. Except as otherwise provided in this Chapter, each notice of intended procurement shall include: (a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;”</p>	<p>Partially Covered</p>	<p>Civic address of the procuring entity (City of Medicine Hat) is not included in the RFP as per the Tender Notices articles in NWPTA, CFTA, and CETA.</p>	<ul style="list-style-type: none"> • Update RFP template.

NWPTA, CFTA, CETA – Observations and Recommendations

Trade Agreement	Agreement Detail	Adherence	Observation	Recommendation
<p>CFTA – Article 517 – Disclosure of Information</p> <p>CETA – Article 19.16 - Disclosure of Information</p>	<p>“Notwithstanding any other provision of this Chapter, a procuring entity shall not provide to any particular supplier information that might prejudice fair competition between suppliers.”</p> <p>“Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide to any particular supplier information that might prejudice fair competition between suppliers.”</p>	<p style="text-align: center;">Covered</p>	<p>No direct explicit information provided to one supplier in order to give that supplier advantage over other suppliers, but by virtue of being aware as a City of Medicine Hat employee, one supplier had knowledge of ‘intent to procure’ in advance of other suppliers. Advantage only to the extent of incumbent advantage identified.</p>	<ul style="list-style-type: none"> • Release a Notice of Planned Procurement simultaneous to time period of informing City of Medicine Hat employee.

NWPTA, CFTA, CETA – Observations and Recommendations

Trade Agreement	Agreement Detail	Adherence	Observation	Recommendation
<p>CETA – Article 19.6</p>	<p>“Notice of Planned Procurement</p> <p>5. Procuring entities are encouraged to publish in the appropriate electronic, and, if available, paper medium listed in Annex 19-8 as early as possible in each fiscal year a notice regarding their future procurement plans ("notice of planned procurement"). The notice of planned procurement shall also be published in the single point of access site listed in Annex 19-8, subject to paragraph 2. The notice of planned procurement should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.”</p>	<p style="text-align: center;">Covered</p>	<p>Not currently a part of the City of Medicine Hat’s process.</p>	<ul style="list-style-type: none"> • Release a Notice of Planned Procurement as encouraged.

NWPTA, CFTA, CETA – Observations and Recommendations

Trade Agreement	Agreement Detail	Adherence	Observation	Recommendation
<p>CFTA - Article 510 - Modifications, Clarification, or New Information</p>	<p>“1. A procuring entity shall make available to all suppliers any new information or clarification of the original information set out in the tender documentation provided in response to questions from one or more suppliers, in an open, fair, and timely manner.”</p>	<p style="text-align: center;">Covered</p>	<p>Three members of the vendor community attended the virtual Vendor Meeting. However, vendors did not ask any questions during the Vendor Meeting, nor sent any questions through the bidding system.</p>	<ul style="list-style-type: none"> • In these cases, release an amendment to the schedule of events to add phase for vendor meeting with individual vendors.



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