



# CAO Guide on Procuring Goods and Services

Advanced Director Training



Condominium  
Authority of  
Ontario

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***Have a Question?***

If you have a question about any of the information in this Guide, please contact us. We have a team available to answer any questions you may have.

This guide may be updated from time to time. You can access the most up-to-date version on the CAO website.

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## Acknowledgements

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## Document Purpose

This Advanced Director Training Guide supplements CAO's Advanced Director Training Modules and serves to deepen participants' knowledge of issues affecting condominium living. This guide provides condominium directors with guidance on the process of purchasing goods or services for the condominium corporation.

This guide will be updated from time to time. To obtain the most up-to-date version, please visit CAO's website at [condoauthorityontario.ca](http://condoauthorityontario.ca).

# Introduction

All condominium corporations require a range of goods, works and services to operate in a safe and effective manner.



Procurement is the process of acquiring goods, works, or services from an external source, often through competitive bidding.

Some goods and services can be obtained through relatively simple and straightforward procurement, such as by *purchasing directly* from an outside source (such as obtaining furniture for the lobby, calling a locksmith to change a lock, or arranging to tow an unauthorized car off the property).

Direct purchasing is best used for those situations that are typically:

- Low risk;
- Relatively inexpensive or low dollar value;
- Simple and straightforward, one-time expenses or recurring subscription expenses (e.g., software licenses); and
- Work cannot be defined ahead of time.

Other situations are considerably more complex and expensive, such as:

- When the corporation needs to engage recurring services over a long period of time, such as third-party condominium management, security services, cleaning services, etc.;
- When there is a need to replace expensive common elements such as a roof, windows, or other major construction projects;
- When arranging to maintain or replace important equipment such as boilers, make-up air unit; and
- When there is a need for external expert advice for special projects, such as engineering services or when a special project needs external advisors.

Each of these situations represents goods, works, and services that can be defined ahead of time, and which are likely to be complex, higher risk, higher dollar value. For those reasons, more rigour, expertise, and attention by the board are also required.

**For complex and potentially expensive purchasing situations, condominium boards must consider a competitive bidding approach that should require identical or comparable bids from the vendors.**

## Objectives of Procurement

The goal of any procurement process is to **maximize the value** obtained by the condominium corporation when making purchasing decisions, using fair and standard procedures that are established and followed by the condominium board.

Condominium directors must remember their legal and fiduciary obligation to manage the finances of the corporation prudently and with due care. One of the ways that a condominium board can meet this obligation is by ensuring optimum value in all purchasing decisions.

### Optimizing Value

Value may be defined differently by one condominium corporation than another; such as:



- Best possible price;
- Certain quality of materials and/or work;
- A particular quantity; and
- Project timeline

Whichever way a condominium corporation defines value, a formal procurement process can help the board ensure the greatest possible value in its purchasing decisions.

By adhering to proper procurement methods, condominium corporations can minimize their risks and exposure to fraud and collusion.

## Guiding Principles of Condominium Procurement

Procurement is an approach used in many industries and sectors, including the condominium sector, which has generated several best practices, such as:

- **There is a right time (and a wrong time) for purchasing.** Condominium boards should always plan projects in advance and leave sufficient time for all necessary procurement steps (e.g., design documents, bidding, contract award, etc.).
- **The process must have integrity.** Condominium boards must always conduct a procurement process in a *fair and transparent way* to avoid introducing risk and liability to the purchasing decision. This means providing a reasonable opportunity for vendors to be successful, and for applying an appropriate level of rigour to the selection. Bidders should always be provided with the same information. No one bidder should be given an unfair advantage over any other.

- **Complexity should be minimized, so that the process is as simple as possible.** Some condominium corporations may be able to manage complex procurement processes, but many are simply not experienced enough or lack the technical know-how needed to manage complex procurements successfully. To avoid trouble and confusion, it is always best to keep the process as simple as possible.
- **Risk should be borne by the right parties.** Condominium corporations should avoid asking suppliers to take on the risk of factors beyond their control, and conversely condominium boards should avoid accepting risk for factors within the supplier's control.
- **Use standard practices and contracts, where possible.** For many large projects, particularly in construction, there are standard contracts available that set out commonly accepted terms and conditions and are well understood by suppliers. It is always best to use standard practices and contracts, wherever possible, rather than “re-invent the wheel” and customize by drafting a new contract for the project.
- **Accountability of the board.** The condominium board always retains sole responsibility over decisions relating to issuing bid documents, obtaining legal advice, and awarding contracts. It is important to remember that this accountability cannot be delegated to another party.
- **Obtain competitive bids for large projects.** Condominium boards must consider whether a non-competitive process increases risk -- or decreases risk -- to the corporation. While there is sometimes a perception that competitive bidding is cumbersome, arduous to manage, or more expensive, the reality is that a competitive process will protect the corporation in the long run. Especially for large and complex projects, this should be the norm for all condominium boards.
- **Get expert help when needed.** Condominium boards should always obtain expert advice whenever appropriate (e.g., architects and/or engineers to prepare design and bid documents, legal review of contracts & specifications). While some purchasing decisions may not require legal advice, it is always an advantage to retain a lawyer to ensure the condominium corporation's interests are appropriately protected.

## Managed Versus Self-Managed Condominiums

This best practices guide often differentiates between condominium board and the responsibilities of a “condominium manager”.

Self-managed condominiums may not have a dedicated individual employed or contracted to perform the role of condominium manager. **It is always recommended that a condominium director be appointed as the single point of contact** for the purposes of the procurement process, and for any significant procurement process (i.e., the role otherwise described as belonging to the condominium manager in this guide).

Creating a single point of contact between the condominium corporation and any suppliers or bidders is a superior approach. A single point of contact will ensure that:

- The procurement process is well-coordinated and that its steps take place in a timely manner;
- Reduce confusion, delay, and miscommunication in sharing information with bidders or suppliers; and
- The process is fair and transparent to vendors, by providing the same level of access, documentation, and information.

The condominium board may also appoint a committee (rather than a single condominium director) to oversee the procurement process. However, care should be taken to ensure there is still only one official point of contact between the committee and suppliers or bidders.

#### **Note to Readers**



The term “owner” is commonly used in standard procurement contracts to refer to the purchaser. For this guide, we will exclusively use “purchaser” or “condominium corporation” to refer to the entity purchasing goods or services and the use of the word “owner” will be reserved for referring to owners of condominium units.

## **Definitions**

### ***Bid (or “Tender”)***

A price and/or time offer to provide a good or service made in response to a bid or tender call. The terms “bid” and “tender” are interchangeable. This document will use the term “bid” for consistency.

### ***Contract***

A formal agreement between two or more parties to provide goods or services, typically in exchange for money. Contracts set out the obligations and responsibilities each party must fulfill under the agreement.

### ***Contractor***

Under a formal contract, the primary supplier is typically referred to as the Contractor.

**Good**

A tangible/physical object delivered as part of a procurement process, e.g., a bathtub, carpeting, or flowers.

**Proposal**

A document submitted by a supplier to a purchaser outlining a proposed scope of work and fee schedule for providing that work. A request for this type of document is referred to as a Request for Proposal, or “RFP”.

**Purchaser (or “Buyer”)**

The party that is purchasing goods or services from the supplier.

**Quality Assurance**

Preventing problems through monitoring and verifying proper procurement methods are being followed.

**Quality Control**

Identifying and fixing problems by monitoring and verifying that the goods and services being provided under a procurement method meet the quality standards.

**Quotation**

A fee schedule provided by a supplier to a purchaser in exchange for providing a pre-determined scope of work. A request for this type of document is referred to as a Request For Quotation, or “RFQ”.

**Service**

Something intangible delivered as part of a procurement process, e.g., accounting, engineering, or management services.

**Supplier (or “Vendor”)**

The party providing goods or services to the purchaser in exchange for money.

**Specifications**

A set of quality standards for the procurement process. Specifications often include what materials and processes are to be followed and the desired quality of the work being supplied.

**Warranty**

An agreement to make good any defects in goods or services supplied under a contract, usually for a pre-determined amount of time.



## **Work**

Any goods or services required to be provided under a contract.

# **Understanding Condominium Board Versus Management Roles in Procurement**

## **Condominium Board**

The condominium board must make all key decisions on when and how to procure, as well as who the procurement contract will be awarded to.

The condominium board must also monitor whether suppliers have fulfilled the terms and conditions of their contract, make decisions required by the execution of the contract, and sometimes decide whether to terminate the contract.

Decisions should be based, in part, on professional advice obtained from qualified experts (e.g., condominium management service providers, lawyers, and professional consultants such as architects or engineers).

## **Owners**

While procurement decisions are made by the condominium board, changes made to the condominium corporation's common elements or services that the condominium corporation provides (e.g., additions or improvements) require that proper notice be given to the owners, or prior approval be obtained by the owners.

Changes that are very minor, such as those that are less than the greater of \$1,000 or 1 percent of the annual budgeted common expenses for the year, or changes that are required to ensure safety or security, typically do not require owner approval.

Changes that are not considered substantial can typically be made by the condominium board, provided they have given proper notice to the owners describing the nature and cost of the change, and owners have not voted against it.

Substantial changes require the board to obtain approval of the owners. Substantial changes are generally defined as *any change where the estimated cost exceeds the lesser of 10 percent of the annual budgeted common expenses for the current fiscal year and the prescribed amount, if any. Substantial changes require approval by the owners of 66<sup>2</sup>/<sub>3</sub> percent of the units.*

Generally, repair or replacement of existing common element components that the condominium has an obligation to repair or maintain with the same or similar materials is not considered a change to the common elements and is not subject to the same notice requirements, though condominium boards may still choose to notify the ownership of large upcoming projects.

### **Tips for Self-Managed Condominiums**

Self-managed condominiums should designate one individual (e.g., a director) to provide a single point of contact for the procurement process.

That is, it can be helpful for one condominium director to play the role otherwise described as belonging to the condominium manager in this guide.



The condominium board may choose to designate a separate procurement committee, but the committee should then take care to ensure a single point of contact is established for all official communication with suppliers or bidders.

This single point of contact for managing the procurement from start to finish will minimize the potential for errors and miscommunication.

For more information including additional requirements, refer to sections 97 and 98 of the Condo Act by clicking [here](#).

## **Condominium Managers**

For those condominium corporations that retain or employ a condominium manager, the condominium manager will most likely facilitate the procurement process, which generally means:

- Taking on “day to day” responsibilities;
- Issuing bid calls or RFQs;
- Facilitating supplier access to the property;
- Receiving bids;
- Tracking bidder information and receipt information such as date/time received; and
- Other duties as requested and approved by the condominium board.

The condominium manager serves as a single point of contact, to streamline communication and avoid errors due to miscommunication.

The condominium manager may have approval to make smaller non-recurring purchases or emergency purchases without the condominium board's prior approval.

## Risk Factors Affecting Procurement Decisions

A key role of any board of directors, including for condominium corporations, is to anticipate and monitor potential risks to the organization.

When considering whether a purchasing decision is needed, condominium boards should be on the look-out for risk factors that might include:

- **What would happen if this project were deferred to a later time?** It is often tempting for condominium boards to defer major (and potentially expensive or unpopular) purchasing decisions to a future date. Condominium boards should guard against this temptation, and ask itself several key questions before deciding to defer an expense:
  - Might deterioration of an asset *increase* if this project is deferred?
  - Could it become more expensive to maintain, or could materials and/or suppliers increase in cost, leading to higher maintenance costs for owners?
  - Could there be secondary damages if it fails?
  - What is the condominium board's liability?
  - Is building failure a possibility?
- **What are the risks of improper procurement or inappropriate project completion?**
  - Anticipated project costs are increased
  - Legal risks are increased?
  - Increased maintenance costs?
  - Shorter capital asset lifespan?
  - Other factors?
- **Is the corporation exposed to additional financial risk associated with this project?**
  - Poorly scoped work may necessitate change orders, leading to cost overruns
  - For very expensive projects, is depleting the reserve fund a risk?
  - Does the project require a loan or special assessment?

- Has the condominium board performed appropriate due diligence on this project?
- **Are there any real or perceived conflicts of interest that the condominium board should be aware of?**
  - Are conflicts material or substantial?
  - If material, how will we handle this issue and how does it impact our procurement process and potentially final decision?

## **Understanding and Managing Conflicts of Interest**

### **The Importance of Transparency and Fairness in all Purchasing Decisions**

In any condominium board decision, it is incumbent upon condominium directors to always act with transparency and fairness. Procurement is another opportunity where transparency and fairness are necessary.

In addition to this being the fundamental obligation of the condominium board, operating with transparency and fairness have several practical benefits, including:

- Building trust and goodwill with owners and suppliers;
- Helping the purchasing process run smoothly;
- Helping the condominium avoid scams, bid rigging, and other practices that can significantly increase financial risk and/or jeopardize the project's success; and
- Helping the condominium avoid legal repercussions (e.g., private lawsuits, competition bureau investigation, criminal charges, etc.).

However, there are several types of situations in which condominium boards can be challenged to make transparent and fair decisions. These are set out in the subsections below.

### **Typical Conflict Situations**

Condominium directors must make decisions in the best interest of the condominium corporation.

*Conflicts of interest* are defined as situations in which a condominium director of a condominium corporation receives direct or indirect benefit from a decision made by the condominium board. These can include material<sup>1</sup> and significant situations, or relatively minor situations.

Conflicts of interest must be avoided, if possible, as they are a poor governance practice, even if disclosed as required by section 40 and section 29 of the Condo Act.

A conflict of interest may arise if a condominium director (or a relation of that director) stands to benefit from a purchasing decision. While conflicts are at some level natural for owners that live in the building and serve on the condominium board, these should be avoided where possible. Conflicts can arise in several ways, such as:

*A condominium director, a family member or personal friend, fully or partially owns a supplier*

In some communities, there may be limited options for the condominium corporation to obtain services or may have a limited number of suppliers to choose from (such as maintenance, landscaping, cleaning). It is possible that condominium directors or owners run businesses that have a legitimate opportunity to serve the condominium corporation. While not ideal, having a conflict may not automatically disqualify that supplier from participating in a procurement process.

Condominium directors should err on the side of caution when declaring conflicts. Even a perceived conflict of interest can tarnish the fairness and transparency of the procurement process and should be declared.

Once disclosure has taken place, conflicted condominium directors have obligations under the Condo Act that usually require them to avoid taking part in any discussion or vote related to the transaction to which they are conflicted.

*A condominium director wishes to satisfy personal needs or interests.*

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<sup>1</sup> The concept of “materiality” is not defined in the Condo Act. In the context of conflict of interest, it is a somewhat vague legal concept that is commonly understood to mean a personal or financial interest that is significant enough to affect a reasonable person’s judgment or influence their vote. Similarly, a material contract or transaction is one that has a non-trivial impact on the condominium corporation’s financial position.

### Caution



Directors may not be covered by directors' insurance if they fail to declare a material conflict of interest, act in bad faith, and may be personally liable for damages.

It is also critical for boards to recognize that bad acts by one director may have a serious impact on the perceived fairness of the entire board and may jeopardize other decisions made by the board.

Boards have a responsibility to address real or perceived conflicts carefully and proactively, even if that director does not agree there is a conflict.

Condominium directors should never make self-interested purchasing decisions – i.e., decisions that benefit the director personally at the expense of the ownership. For example, condominium directors should never push for an unnecessary renovation or construction project to increase the value of a unit prior to selling.

Making self-interested decisions is unethical, may expose the condominium director to personal liability from other owners or stakeholders, and in certain situations may be illegal.

In any conflict-of-interest situation, even those that are not considered material by *the Condo Act*, it is best practice for individuals that are conflicted in any way to avoid being involved with the board's decision-making process.

Condominium directors may also wish to physically remove themselves from that part of the meeting (known as "recusing themselves" from the discussion). It is also unacceptable to stay in the meeting and not participate, since the condominium director's presence may dampen or negatively impact the freedom of discussion of other directors.

Conflicted condominium directors must not vote on conflicted contracts or transactions even if they have declared the conflict.

All decisions related to this topic should be clearly recorded in the meeting minutes.

#### *A condominium director receives a gift or bribe*

Under no circumstances should a condominium director ever accept a gift or bribe or benefit personally in any way from making a purchasing decision. It is acceptable for a condominium director to benefit alongside the rest of the owners from making sound and transparent decisions that upkeep the property and preserve property values.



When in doubt, condominium boards should obtain legal advice to determine if a material conflict exists, disclosures required, and the process or actions that should be taken by the condominium board as a result of the conflict.

For more information on conflicts of interest and disclosures, please see the CAO Guide on Governing Condos.

## Before Making a Purchase

### High-level Procurement Steps

Condominium boards should follow these general steps when planning any procurement project:

1. Understand and document the procurement need
2. Identify and select the right procurement approach
3. Identify the right goods and suppliers
4. Select and run a successful procurement process
5. Make the purchase and award the contract
6. Review and monitor purchasing decision

The following chapters in this guide provide details about how to implement this high-level process.

### Understanding Your Condominium Corporation's Procurement Policy

Some procurement guidance or policies may already be in place for the condominium corporation. The condominium board should be familiar with their condominium corporation's Declaration & By-laws, to ensure any purchasing decisions are consistent with the requirements of the condominium corporation's governing documents.

Condominium boards should review (and apply) the guidance or policy in the following order:

1. Governing documents (i.e., declaration, by-laws, and rules);
2. Policies passed by the condominium board;
3. Procurement clauses in your condominium management agreement, if any; or
4. Practices and procedures established in past procurement exercises.



### **Pro Tip**

For any sizable or large purchase, condominium boards should obtain a minimum of three (3) quotes or estimates.

As a rule, it is a best practice to always obtain three (3) or more independent estimates, quotes, or bids for “large” purchases.

A “large” purchase will vary by condominium size and type.

Condominium corporations can consider obtaining multiple bids or estimates for purchases that are expected to exceed either a *specific dollar value threshold* (e.g., greater than \$5,000), or a *percentage threshold* (e.g., greater than 1% of the operating budget).

Procurement decisions are typically made by a majority vote of the condominium board (i.e., never by individual directors and it is not necessary for all directors to agree); however, there are some exceptions, for example:

- Condominium managers would be granted the authority to make sole procurement decisions if there is a hazardous situation which could cause personal injury or damage to the property of the condominium corporation, and the condominium board cannot reasonably be contacted to give timely approval of the work.
- Condominium managers may be granted prior approval by the condominium board to make procurement decisions on non-recurring purchases less than a certain dollar value threshold (e.g., less than \$5,000).

## **Legal Considerations in Procurement**

Condominium directors serving on condominium boards have a duty of care to all owners to take care of the condominium corporation’s property and ensure the condominium corporation’s funds are spent responsibly.



It is recommended that condominium boards retain expert legal advice and guidance for critical stages of any procurement project. The type and frequency of legal advice will largely depend on the size and complexity of the project.

For example:

- Large condominium corporation procurement projects are often based on a call for bids. A call for bids, or **bid call**, (more details below under “[Bidding](#)”) creates a “bid contract” until the time period for bid acceptance is over. This is referred to as “Contract A”.
- “Contract B” is the contract to provide goods or services resulting at the end of the procurement process, such as a service agreement or industry-standard construction contract (known as a Canadian Construction Documents Committee or “CCDC” construction contract).

In any large procurement process, the contractual arrangements and obligations of the corporation can be tricky to navigate. It is incumbent on the condominium board to ensure that the terms of the bid contract are upheld. Violating these terms may result in legal trouble for the condominium corporation.

#### **Pro Tip**



Violating the terms of the bid contract may result in legal trouble for the condominium corporation.

Condominium boards should always retain expert legal advice and guidance for critical stages of any procurement project.

As previously recommended, obtaining expert advice is highly recommended when navigating the complexities of bidding and contract law.

## **Step 1: Understand and Document the Procurement Need**

A purchase or procurement is required when the condominium corporation needs a good or service to facilitate condominium operations. This need could arise due to several situations, such as:

- The expiry or termination of an existing contract
- The desire to add new services, improve building maintenance, or safety

- Inspection and repair of capital assets
  - E.g., engineering assessments, routine maintenance, preventive maintenance, reserve fund capital projects
- New regulatory requirements
  - E.g., Building or Fire Code Revisions, Municipal By-laws
- Regulatory enforcement orders
  - E.g., Technical Standards and Safety Authority (TSSA) or Fire Marshall enforcement orders, Human Rights Tribunal of Ontario (HRTO) orders, etc.
- Need arising from expert recommendation
  - E.g., an architect or engineer hired to review the building might recommend repair work be carried out.

These situations give rise to purchasing needs, and different approaches to procurement, as described in the section below.

## Assessing the Purchasing Need

In general, there are two major types of condominium corporation purchasing needs: *operational needs* versus *special projects*.

*Operational needs* involve goods and services that are obtained or renewed on a regular basis, and which typically fall under the condominium's operating budget. Examples of operational procurement needs include:

- Condominium management
- Consulting (e.g., accountants, architects, engineers, lawyers, etc.)
- Heating, ventilation, air conditioning consultants ("HVAC")
- Elevator repair and maintenance
- Landscaping & snow removal
- Cleaning
- Garbage disposal
- Maintenance
- Parking
- Pest control
- Security
- Window washing

*Special projects* refers to goods and services obtained on an infrequent basis. These are most often capital repair projects that fall under the condominium's reserve fund or require special funding. Special projects typically include:

- Major repair and replacement of the common elements (i.e., reserve fund projects, as set out in Sections 93-95 of the Condo Act). Examples might include:
  - Corridor and lobby renovations
  - Roof replacement
  - Window replacement
  - Structural repairs
  - Waterproofing
  - Other projects eligible for reserve funding
- Capital improvements, such as installing solar panels, electrical vehicle chargers, installation of a 'green' roof, or other projects.

## Identifying Potential Solutions for the Need

Is the purchasing need obvious or should the condominium board retain an expert to identify solutions? For example, condominium boards may not be qualified to make decisions on how to address building accessibility concerns and may require input from legal and architectural professionals.

## When is Competitive Bidding Appropriate?

Competitive bidding is the “gold standard” for procurement where multiple suppliers are asked to bid on the same goods or services.

*Competitive bidding* should always be used for large procurement projects where the work can be well defined ahead of time (e.g., for construction and restoration projects). Competitive bidding can provide the best value for money spent.

*Direct purchasing* is preferred for smaller procurement items (e.g., maintenance contracts, office supplies, landscaping) or services where the work cannot be well defined ahead of time (e.g., accounting or engineering services). Direct purchasing will involve issuing a request for proposals or quotations to select suppliers, and often the goods or services being provided will differ between each supplier.

It is possible to have a “*hybrid*” approach (e.g., a competitive evaluation of multiple proposals). However, this often involves complex evaluation criteria, as a direct comparison between two or more proposals is often not possible.

As a best practice, condominium boards should take care and solicit legal and expert advice when deviating from standard procurement practices.

# Establishing a Realistic Procurement Timeline and Options

A key step in any procurement process is to establish a reasonable and realistic timeline for purchasing. The following sections outline typical timelines and key considerations that should be factored into initial scoping and planning of the purchasing need.

## *Typical Procurement Timelines and Set-Up Requirements*

It is important that condominium boards allow enough time for an appropriate procurement process. A few considerations:

- A proper competitive bid requires a *pre-determined scope of work*, and/or possibly *technical specifications* are developed to share detailed information with potential suppliers and bidders. These documents will allow bidders to make an informed bid and will be crucial to the success of the procurement process. However, they are also potentially detailed technical documents that can take anywhere from weeks to months to develop.
- A *call for bids* from opening to closing can take two (2) months or longer, depending on the type of bid process and complexity of the project.

Condominium boards must ensure the procurement process allows bidders enough time to prepare competitive bids. Condominium boards must also ensure there is enough time to review bids or quotes, interview short-listed suppliers, and other activities.

Note that procurement timelines will be heavily influenced by the availability of the condominium board to meet.

For example, for condominium boards that can only meet once per month without the capacity for interim meetings, the procurement process might take substantially longer to review bids, arrange vendor interviews, and make contract award decisions.

### **Does the season matter in procurement?**



Sometimes. Some goods and services have better (or worse) times to purchase.

For large procurement projects, especially construction, it is ideal to plan procurement at least a year in advance and call for bids during the slow season (typically late fall or winter), to ensure competitive pricing.

In these cases, condominium boards may wish to consider creating a committee to assist in meeting any required procurement timelines.

Another consideration is vacation or holiday periods when condominium directors may not be available. The condominium board should realistically consider whether the procurement period will encroach on pre-scheduled absences and whether that timing might impede a timely purchasing decision.

## **Step 2: Identify and Select the Right Procurement Approach**

### **Selecting the Right Type of Procurement**

There are a variety of procurement types, many of which are typically used in the condominium sector. Some of these types go by other names, however most common examples are explained below.

**In general, it is recommended that condominium boards use whatever terminology is considered common and well-understood in the relevant geographic area, or what suppliers relevant to this procurement project tend to prefer.**

### **Bidding**

Bidding is a formal procurement process, in which a bid call is put out, requesting that suppliers provide prices to provide a good or service in accordance with a specified scope of work.

The bidding process has formal timelines and deadlines for bid submission. Bids are often competitive and sealed. For example, pricing is kept concealed until the bid “closes”.

Bid calls can be public or private (i.e., bidders are shortlisted from a pool of potential suppliers which meet certain standards, thereby becoming “pre-qualified”). Pre-qualification criteria might include a vendor’s size, specific qualifications, and/or ability to provide specific insurance coverage or bonds.

The standard in the condominium industry is to use a *private bid call*. Greater care must be taken with public bid calls, or when bidders are not pre-qualified, as the lowest bidder

might not have the resources or technical capacity to be able to properly carry out the project.

Bids are collected, evaluated, and then a contract is awarded to the successful bidder. Contract award is usually made to the lowest bid (i.e., the supplier who can provide the goods or services specified for the least amount of money).

It is possible to create bid award criteria other than just price, provided the bid documents clearly communicate those criteria to the bidders (e.g., quality-based selection or a points-based system).

Bidding often has legal implications, creating a binding contract between the purchaser (i.e., the condominium corporation) and the bidders, to enter into a service agreement with the successful bidder.

Condominium directors should always seek the advice of their lawyers on the responsibilities and obligations under a formal bidding process.

## **Request for Proposal (RFP)**

An RFP is a procurement process where the condominium board puts out a request for proposals or “RFP” to interested suppliers. Interested bidders will prepare a proposal that includes a proposed scope of work, and a fee schedule for that work.

RFPs/proposals are useful for larger or more complex projects where the process or final good or service is unknown. Examples of RFP situations could include:

- Landscaping design
- Consulting services
- Architectural or engineering services
- Other projects

RFPs are also commonly used for HVAC and elevator maintenance contracts, though it is not recommended. As a general statement, these services are better suited to a standardized scope of work to all bidders or suppliers.

In some cases, the condominium corporation may not be able to articulate the exact statement of work. For these, an RFP outlines a broad description of the corporation’s purchasing need and current situation. It is up to the interested bidder to develop a proposal with a customized scope of work and pricing, and for the corporation to decide whether the scope and pricing are appropriate to address the need. Therefore, the proposals may not be identical, and for that reason, will require additional caution and care from the condominium board when evaluating all bids.

For example:

- The corporation invites *proposals* to replace a roof of a certain size, however it would be up to the vendor to supply the details and pricing for the roof they believe satisfies the need.

## **Request for Quote (“RFQ”)**

A RFQ is a procurement process in which a condominium board requests quotations from interested suppliers. A quotation is a price to provide a certain good or service.

Quotations are typically requested for simple projects where there is a clear process and the final good or service is well-defined. Requests for quotations might be used for waste collection, landscaping maintenance, window washing, or cleaning services.

## **Supplier of Record**

This process involves procurement from a trusted or previously vetted supplier. This approach can be useful for supplying goods and services on a routine basis, without having to go through a formal bid process each time.

Examples of services where condominium corporations will often use a supplier of record procurement process includes auditors, cleaners, landscapers, and reserve fund providers.

Procuring goods or services from a Supplier of Record should be used when the condominium board is satisfied with the level of service being provided, pricing, and quality of materials and work.

Even if the condominium board is satisfied, it is good practice for all contractual arrangements, including Suppliers of Record, to be periodically re-evaluated to ensure optimal value of goods and services, and to avoid both condominium board and suppliers from becoming complacent about the arrangement.

## **Project Delivery Methods**

Most service contracts will be delivered based on a custom service agreement with the supplier, or sometimes based on a combination of supplier’s quotation plus purchase order issued by the condominium.

For large capital projects (or construction projects), delivery of the projects will be delivered based on one of three standard project delivery methods:

1. **Design-bid-build** is one of the most common project delivery methods in the condominium sector. This approach has three distinct entities that work to design, then bid on, then ultimately construct, or build a project: the *purchaser* (or “owner”), the *supplier* (or “contractor”), and the *designer* (typically an architect or engineer).

- The first step is that a designer prepares project specifications.
- Those specifications are then used to form the basis of a competitive bid.
- At the conclusion of the competitive bidding process, one supplier is selected to “build” and is awarded the construction contract.

When considering the two other project delivery methods, condominium boards are encouraged to obtain expert advice. These methods are often best used by organizations with a high degree of procurement expertise:

2. **Design-build.** In this approach, specialist construction management consultants combine the designer and supplier into a single entity.

- The specialist consultants are engaged to design the project specifications, and subsequently run a competitive bidding process.
- Once the bid process is concluded, a supplier is selected by the purchaser and is awarded the construction contract.

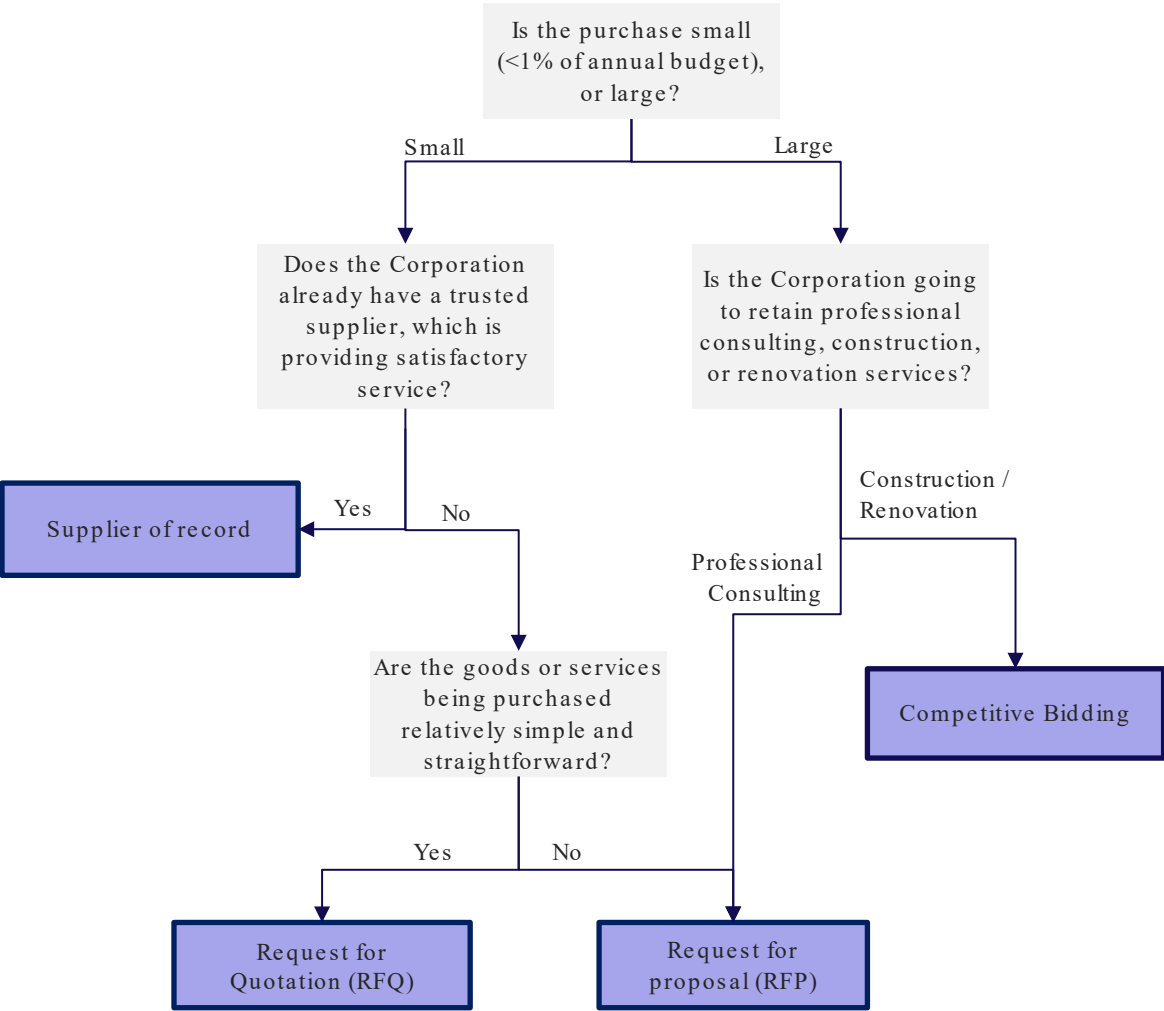
3. **Integrated project delivery.** In this uncommon and complex approach, specialized construction management consultants sometimes combine the purchaser, designer, and supplier into a single project team to run the project.

Alternate project delivery methods exist, but are typically not useful for condominium procurement.



# Selecting the Right Procurement Approach

The following is a flowchart that outlines, at a high level, a decision tree for determining the most suitable procurement approach for a project. It considers the size of project, whether supplier relationships already exist, and the type of services being procured



Note that there are always exceptions or special circumstances to the process recommended above.

If in doubt, most condominium corporations should have ongoing relationships with an architectural or engineering firm (e.g., for reserve fund planning and building condition assessments), who often specialize in and can assist with procurement projects. Condominium boards may also consider contacting their lawyers or retain specialist procurement consultants to assist in difficult situations.

## Types of Bids Defined

Bids can be understood in two ways: in terms of the way that bids are solicited by the corporation, or in terms of how bids are evaluated by the corporation:

By *bid call* method:

- *Invitational bid call*. Also called a *private bid*, a corporation selects ahead of time only those suppliers who will be allowed to bid. Only bids from these suppliers will be considered.
- *Open bid call*. Also called a *public bid*, a corporation permits any supplier who meets the requirements to submit a bid. Open bids may be advertised online through a purchasing website, or in an industry-specific publication or newsletter.

By *bid evaluation* criteria:

- *Lowest Bid*. The contract is awarded to the bidder who submits the lowest compliant bid price.
- *Best Value*. The contract is awarded to the bidder who provides the best value, which is evaluated on criteria in addition to price (e.g., proposed products or methods, time to complete the work, ability to phase the work, etc.).

## Types of Contracts Defined

Recurring services (e.g., service contractors, management services, etc.) often rely on custom contracts that may be created by either the condominium corporation or the supplier.

### Pro Tip



Service contracts for recurring services will often contain clauses where the contract auto-renews, unless terminated.

Condominium boards and managers should track these renewal dates, to ensure that proper notice can be given to any supplier whose services the condominium board may wish to terminate.

Small purchases often rely on a purchase order issued by the condominium corporation or their condominium manager, which will contain certain terms and conditions. To avoid legal complications and to facilitate the procurement process, large purchases should always rely on industry standard contracts, wherever possible. Most, if not all, large procurement projects undertaken by condominium corporations will relate to the renovation, repair, or restoration of the building.

In Canada, the Canadian Construction Documents Committee (“CCDC”) publishes construction contracts that are considered industry standard and should be used whenever possible.

CCDC contracts might not be appropriate for some specialized large procurement projects, such as landscaping or elevator maintenance. Care must be taken when drafting or reviewing contracts for these services – always consult with the condominium’s lawyer. The same general procurement principles apply to large projects regardless of whether they are completed under a CCDC contract.

The two most common types of CCDC construction contracts in the condominium industry are:

- *CCDC 2 – Stipulated Price Contract.* One of the most commonly used forms of construction contract in the condominium sector, the “stipulated price” approach means that there is a set contract price agreed to at the outset of the project.

With the exception of changes that take place and are specifically approved after the contract is signed (known as change orders), the project must be completed for the amount set out in the contract.

The CCDC 2 contract is preferred for larger projects with well defined scopes of work, due to the peace of mind afforded by the stipulated price.

- *CCDC 4 – Unit Price Contract.* Unlike the stipulated price contract, the unit rate price contract is based on a unit rate for each item of work. The contract price is an estimate that will be adjusted up or down based on the measured quantity of work completed.

The CCDC 4 contract is preferred when the type of work is well defined, but the quantity of work is not (e.g., a brick repair project where the repair quantities are unknown).

Other forms of CCDC construction contracts that are less commonly used in the condominium industry include:

- *CCDC 3 – Cost Plus Contract.* In this contract type, the purchaser will pay the cost of all labour and materials plus a pre-defined percentage or fixed fee mark-up. Cost plus contracts can be useful where the scope of work is not clearly defined at the project’s outset.
- *CCDC 5B – Construction Management Contract for Services and Construction, or CCDC 17 – Stipulated Price Contract* between owner and Trade Contractor for Construction Management Projects.

**As a best practice, condominium corporations should always obtain legal advice before entering into any contract.**

## Weighing the Options

What are the costs and benefits of each procurement approach to the project? For example, if the roof is leaking, should the condominium perform leak repairs, or consider replacing the roof?

Cheaper short-term solutions might end up costing more money in the long run. Temporary repair costs will add up and can only defer a replacement for so long. However, short-term solutions might be preferable due to budgetary or cash flow situations (e.g., to avoid a loan or special assessment, and instead build up the reserve fund).

The condominium board should discuss when to bring in project stakeholders, such as owners. Notice to owners is required when changes are to be made to the common elements and services that the condominium corporation provides, except when the changes are required by regulation, a matter of safety, or are less than \$1,000 or 1% of the condominium corporation's annual budget for the current fiscal year (i.e., considered minor). For changes that are not minor or made for regulatory or safety reasons, owners have the opportunity to requisition a meeting and vote on the proposed change. Substantial changes to the common elements require not just that notice be given to owners but also that the owners of at least 66-2/3 percent of the units vote in favour of the change. Substantial changes include any project worth more than 10 percent of the annual budget; however, condominium boards may elect to treat a project as substantial even if it does not meet the threshold.

Repair or replacement of existing common element components that the condominium has an obligation to repair or maintain with the same or similar materials is not considered a change to the common elements and is not subject to the same notice requirements. Even if a project does not require notice to, or approval from, owners, the condominium board may still elect to involve them in the decision-making process as project stakeholders. This could take the form of an owners' meeting to solicit feedback or establishing a sub-committee made up of interested owners. This might be done for a project that could have a large aesthetic impact on the community, such as selecting a new colour scheme during a siding replacement project.

The value of input from stakeholders should be weighed against time spent to obtain the input, which may unnecessarily delay procurement and increase the risk to the condominium corporation. For example, owners may disagree on proposed colour changes, which may in turn hold up an essential siding project, resulting in leaks and other damage to the property.

## Studying the Feasibility of the Project

Once a need has been defined, and a range of options identified, the condominium board should assess the feasibility of the project. This means spending time to assess each of the multiple options to solve the identified need, assessing the 'goodness of fit', and identifying the costs associated with each potential solution.

Costs to the condominium corporation might include financial costs, but also time, regulatory hurdles, or disruption to residents.

Condominium boards should consider a professionally prepared feasibility study for large or complex projects. Projects under consideration should also be reviewed with the condominium's lawyer to determine any legal implications of the project.

Smaller projects could be evaluated using an options analysis prepared by a subset of the condominium board, manager, or a committee.

## Compliance with Regulatory Requirements

The condominium board should ensure the condominium's lawyer has reviewed the planned project to identify any legal implications.

For any large improvements, alterations, or repair projects, the condominium board should ensure proper architectural and/or engineering professionals have been retained to review applicable regulations and assist with any required permits.

## Budgetary Considerations

Condominium boards can generate procurement budgets based on how much money is allocated or available in the condominium's operating budget or reserve fund for the purchase. They can also rely on cost estimates generated during the feasibility study.

If the cost estimate in the feasibility study exceeds the allowable budget, condominium boards may wish to take one or more of the following steps:

1. **Reduce and/or clarify the scope of the purchase.** Condominium boards could revisit the proposed scope of work to reduce the effort and materials expected. Condominium boards can also tighten up technical and other specifications to provide additional information to potential suppliers. Doing so may allow condominium boards to bring the cost estimate back into line with the budget.
2. For operating account purchases: **increase the project budget to cover the cost of the work.** If they have obtained multiple estimates and it appears that the

initial estimated budget will be too low to achieve the right quality and timeline, condominium boards may decide to increase project budget.

3. For reserve fund purchases: **revise the funding plan and consider alternative financing options**, such as a special assessment or loan to cover the funding shortfall. Condominium boards should be aware that any loan or borrowing would require an appropriate borrowing by-law, which should preferably be drafted by the condominium's lawyer and must be approved by a vote of the owners.

It may also be possible to revise the Reserve Fund Study and associated funding plan to cover any shortfall with increased future contributions to the Reserve Fund or a special assessment, rather than relying on borrowed money.

The condominium board should consult with their reserve fund planner to see if funding a project through adjustments to the reserve funding plan is possible.

If the funding plan is to be changed, the condominium board must issue a revised Notice of Future Funding of the Reserve Fund under section 94 (9) and (10) of the Condo Act to all owners at least 30 days prior to the new plan coming into effect.

## **Building a Business Case for Certain Purchase Decisions**

As previously mentioned, certain purchases require “buy in” from the condominium's owners (e.g., substantial changes to the common elements). Even purchases that do not require direct owner approval should always be made in the best interest of the owners, and it is helpful to socialize major decisions with owners even if they are not voting on the project.

By following the steps in this guide, the condominium board should be able to clearly define the need for the project, identify potential solutions, explain which solutions were feasible, and how much the project is expected to cost.

Condominium directors should ask themselves if they have enough information to explain the purchasing decision to the owners. If not, what information is missing, and how might it be obtained?

A **business case** is a useful tool for communicating a purchasing decision, and all of the analysis that has factored into the final decision.

Condominium boards can always solicit expert advice if they are not sure how to proceed.

## Anticipating and Managing Project Costs

There are several cost planning and control tools for any procurement project that the condominium board should consider at the outset.

Most condominium procurement projects will benefit from some basic project management practices, such as:

- Establishing cost planning and control measures;
- Establishing a construction budget at the outset;
- Tracking and documenting project costs in a spreadsheet; and
- Agreeing in advance an approval process for making project decisions, including escalation of issues and approval of change orders.

Condominium boards should consider engaging qualified professionals to conduct feasibility studies, prepare cost estimates, administer large contracts, and certify payments to suppliers.

### Caution

The construction industry has developed several innovative approaches that are sometimes used by developers and others that seek to drive the most value from construction projects. An example is value engineering. This approach may be tempting to condominium boards that reasonably want to secure the best value and minimize project costs.

**Value engineering** is an iterative design process intended to optimize the investment value in a project. The approach typically allows for suppliers to substitute materials after the initial design process, in order to use a product that is more readily available or can be supplied more cost effectively.

While obtaining lower priced materials might sound like a good approach, this may introduce unacceptable risk for condominium procurement projects, where the goal is to provide long-term value for the owners (versus optimizing short-term investment value).

Condominium boards should exercise caution when considering Value Engineering, as opposed to relying on the advice of a design professional.

The use of Value Engineering may lead to procurement problems that create unacceptable liability for the condominium board. Expert advice is strongly recommended.



## Documenting the Purchasing Need

Once the need for a purchase has become known, and the scope, budget, and feasibility of the project have been discussed, the condominium board should document the purchasing need and its intent to procure.

Documentation is a critical factor in good governance. The current roster of condominium directors and/or condominium manager may not be available to provide historical information to a future condominium board. Records may be needed in the event of contract dispute, legal trouble, or other situations. Ways of documenting the condominium director's analysis and decision-making process include:

- Documenting in the minutes the underlying reason for the purchase, as well as discussion that has taken place around potential options, presumed budget, etc.
- Holding a board meeting and voting on a resolution to adopt the procurement option selected.
- Retaining records of feasibility, and cost estimates in a project file. Condominium directors should circle and initial selected options in any documents outlining more than one option.
- Retaining information/document packages. Documents like feasibility studies or cost estimates should be appended to the relevant meeting minutes, and these documents should be provided to any consulting professionals (architects, engineers, etc.) to ensure there is no misunderstanding about the selected scope of work.

It is critically important to obtain and document all required owner and regulatory approvals.

If there is a borrowing by-law to be enacted, approval must be obtained from the owners prior to the condominium board committing to borrowing the funds.

## Step 3: Finding the Right Goods and Suppliers

### Forming a Purchasing Committee

The condominium board will typically oversee the bidding process; however, the condominium board may wish to create a special committee to oversee the purchase of important or high-cost services.

When forming the committee, the condominium board should remain mindful of:



- The ability of members to invest enough time and attention to the bid process. Bidding is a time sensitive process and may take many hours from start to finish. Consistency of decision-making and understanding are key to an effective process. Condominium directors should consider whether they have enough time or capacity to participate on a committee which will require time over and above their normal duties.
- Some condominium directors may have a conflict of interest and need to remove themselves from the purchasing process. This problem may be particularly prominent in low-population areas with limited choices for suppliers.
- The committee may take advice from owners, third-party consultants, or other individuals in overseeing the bid process.

**Remember, the condominium board always retains final purchasing authority and decision-making powers.**

While the committee can be helpful to manage and coordinate large quantities of technical and other information, the committee itself *must not* be perceived to have decision-making rights.

Instead, the committee should perform analysis, run the process, but only *make recommendations* to the condominium board about which supplier(s) should be awarded the contract. The condominium board should review carefully, consider the analysis, and if satisfied, approve the committee's recommendation.

## Designing an Effective Procurement Process

### Legal Check for Compliance with By-Laws, Local Laws and Regulations

A key first step in designing an effective process is to understand the requirements of *the Condo Act* as well as the governing documents of the condominium corporation (i.e., declaration, by-laws, and rules).

If there are questions or concerns about the legality of the proposed project, the condominium board may wish to consult with the condominium's lawyer. This is advisable if the purchase involves additions or changes to the condominium's common elements.

For assistance in navigating permit applications or regulatory approvals, the condominium board should consider retaining an appropriate consultant (e.g., architects and/or engineers).

## Ensuring Fairness and Transparency in the Process

Fair and transparent bidding processes can lead to higher quality of bids and a greater number of bids. Experienced suppliers recognize the signs of a biased process, which will discourage them from participating.

Hosting a fair and transparent bidding process means:

- Providing all bidders with the same information;
- Providing bidders adequate time to prepare their bid;
- Providing bidders with enough information that the scope of work is clear and well understood;
- Asking all bidders to take on the same risk;
- If a question is asked by one bidder, distributing the question and answer to other bidders afterwards;
- Keeping the bidding process simple;
- Evaluating each bid on the same criteria; and
- Following standard practices and standard forms of contract whenever possible.

## Selecting the Right Time to Procure Goods/Services

Selecting the right time to procure goods and services can ensure a high-quality proposal process and sometimes preferential pricing.

Allowing enough time for planning may be the most important part of procurement. Procurement can take a great deal of time and energy. Appropriate, well-considered plans will help keep the project on track and keep everyone aligned.

In general, the larger the project, the more time should be budgeted for planning and procurement. Some considerations for timing of procurement processes:

- If the condominium is procuring a recurring service, the condominium board should start the procurement process well in advance of the current contract's end or termination date.



Depending on the complexity of the project, the condominium board may need to budget anywhere from two (2) to six (6) for the development of specifications, legal review, and contract award.

- For large construction projects, the planning process should be started up to a year ahead of time.
  - If the project requires owner approval or has complicated permit/regulatory application processes, it might even require more than a year!
  - The condominium board may also wish to consider that projects are often time sensitive and are usually carried out between spring and fall. If the condominium board is looking for the best pricing, it can often be obtained in the “off season” (late fall and winter). However, some projects are not typically done in winter (e.g., roofing, windows).
- Interior projects that are not impacted by weather (e.g., corridor renovations, lighting retrofits, carpet replacement, interior painting, etc.) may be cost-effectively completed in the “off season”, when suppliers are otherwise not as busy.

## Drafting Specifications

Suppliers should be provided with accurate specifications to assist them in understanding the condominium board’s vision and delivering the service that the condominium board wants. For simple projects, condominium boards or managers can draft a scope of work to be issued to bidders (e.g., in the case of maintenance contracts, security services, etc.).



For larger and more complex projects, condominium boards should rely on a professional (typically an architect or an engineer) to prepare technical specifications, which will be issued to bidders as part of the bid package (e.g., in the case of landscaping construction, building repairs, corridor renovations, etc.)

Specifications for the project should indicate insurance and bonding requirements required of any suppliers or bidders. These may include:

### ***Insurance***

- Workplace Safety and Insurance Board (WSIB) Coverage
- General Liability Insurance
- Automobile Liability Insurance
- Broad Form Insurance
- Other

## ***Bonding***

- Bid Bond/Letter of Credit
- Performance Bond
- Labour & Material Bond

Insurance and bonding requirements can be complicated and expensive. Condominium boards may wish to obtain expert advice to determine what insurance and bonding is required or recommended.

Insurance and bonding requirements should be communicated to any architectural or engineering professional preparing technical specifications.

If forming part of a bid call, specifications will set out the form of contract for which the successful bidder will enter into with the condominium corporation.

## **Developing the Right Bid Evaluation Criteria**

All bids should be reviewed and evaluated based on pre-defined criteria or factors that are important to the condominium corporation. Criteria will differ by condominium; however, criteria commonly include:

- Bid price;
- Firm qualifications;
- Project schedule;
- Project references;
- Project team qualifications;
- Value-added offers; and
- Other factors important to the condominium board.

When using evaluation criteria, there are some tips to keep in mind:

**A maximum of six (6) criteria should be used, and only the most important criteria should be chosen.** More than six criteria reduces the ability to distinguish between bids.

**Decide how each criterion will be weighted before the bid takes place, if at all.** Some purchasers may weight all criteria the same for simplicity, whereas others may wish to weigh some criteria more than others.

**Ensure the evaluation criteria are clear and easy to understand.** The criteria must be mutually exclusive and have no overlap between them.

**Communicate criteria to suppliers.** Make sure that each bidder is provided with information on how the bids will be evaluated. If a scoring system is to be used, it should be provided to all bidders at the start of the bidding process. This can be included in the bid documents.



The condominium board may also want to consider implementing a scoring system. Scoring systems typically break the bids into categories and assign points to each, usually totalling to a score out of 100 points.

Out of 100 points assigned to each bid:

- 40 points for bid price
- 20 points for firm qualifications
- 20 points for project schedule
- 10 points for project references
- 5 points for project team qualifications
- 5 points for value added offers



The condominium board may also wish to consider whether it will accept and consider alternate prices or proposals. Considering alternates may complicate the bid evaluation and should be approached with caution.

## Evaluating Lowest Bid or Best Value

Lowest bid or best value are the two most common approaches to evaluating bids.

*Lowest bid* means that the selection of supplier will be based purely on price. This is most commonly used for small projects or straightforward purchases (e.g., those where

quotes are requested, and a purchase order is issued). Lowest bid can also be used for larger projects when the project has detailed technical specifications and bidder pre-qualification, to ensure a consistent level of quality between the bids.

*Best value* bids are those where selection is primarily based on price, but other factors are also considered, including criteria as described above, such as:

- Proposed schedule or project timeline;
- Qualifications of the supplier;
- References provided by the supplier;
- Special qualifications or skillsets;
- Value-added offers; and
- Proposed quality assurance and quality control systems.

Best value bids can be used for any type of purchase, but it is essential that the selection criteria are transparent and provided to all bidders at the start of the bidding process. Otherwise, bidders might think that the request is unfair and decide not to bid.

## Documenting Results

Evaluation criteria (including scoring systems) should be well documented and included in the bid documents, so they are available to each bidder.

The evaluation criteria should also be listed in detail; such as in minutes of a condominium board meeting, to confirm the bid evaluation criteria that will be used ahead of time, for the purpose of accountability and transparency.

## Preparing the Bid Package

The following is considered a “complete” bid package for a large or complex procurement project. The size and complexity of the bid package is anticipated to scale with the size and complexity of the project and should not be more complicated than is necessary.

A sample bid package will take the following general form:

- **Bidding Requirements (Division 00 Specifications)**
  - **Introductory Information**
    - Title Page & Table of Contents
  - **Bid Solicitation and Closing Date/Time**

- Either an advertisement of the bid opportunity (for an open or public bid), or an invitation letter or email (for an invitational or private bid)
- The bid solicitation should provide a summary of the project, any important details to allow prospective bidders to determine interest in the bid opportunity and include a way for any bidders to obtain the complete set of bid documents.
- The bid closing date or deadline should be clearly provided.
- **Instructions to Bidders**
  - Sets out terms and conditions of the bidding contract (i.e., the “Contract A”); including the bid closing date and time.
  - The instructions to bidders can be quite lengthy for a detailed project and should clearly break down the scope of service and corresponding information required from bidders to ensure that the bids are directly comparable.
  - The instructions to bidders should include the requirement to provide at least 3 professional references.
  - Condominium boards should consider retaining outside expertise (e.g., an architectural or engineering firm, or a law firm) to help draft this portion of a bid document.
  - **Tip:** If the condominium is unwilling or unable to award a project based on a single bid (e.g., due to rules or by-laws prohibiting them from doing so), this must be set out clearly in the instructions to bidders.
- **Available Project Information**
  - All available information that can assist bidders in better understanding the project  
E.g., existing investigations, surveys, environmental reports, designated substance surveys, etc.



**Note**

Failure to disclose information is not recommended, as it can lead to increased project cost or time and may leave the condominium corporation liable for damages.

- **Bid Form**
  - Specific to each project and will set out the way each bidder should submit information on pricing, scheduling, etc.
  - The tender document should specify that the bidder is required to provide clear and specific itemized breakdown of costs, e.g.,

hourly rate and number of hours for each type of service/labour, materials, etc. Bidders will need to meet this requirement to move forward. It is recommended that the board consider including a standard form template for the bidders to complete.

### **Best Practice**



The condominium board should always require a common proposal format to allow for easy and comparable evaluation of the bids (i.e. all bids should be identical for an apples to apples evaluation).

- **Bid Form Supplements**
  - Optional items to be provided in addition to the bid form
  - E.g., bid security (bond/letter of credit), alternative prices, etc.
- **Contract Documents**
  - Contract Requirements
    - Agreement
    - Definitions
    - General Conditions

### **Note**



Standard form of contract, like a CCDC 2 Stipulated Price Contract, will include an Agreement, Definitions, and General Conditions.

- **Amendments to Standard Form of Contract** (often called Supplementary Conditions):
  - Amendments should only be drafted by qualified professionals, such as an architectural or engineering consultant, or the condominium's lawyer
    - Amendments provided by consultants should be reviewed and approved by the condominium's lawyer
  - Amendments should always be kept to a minimum, and the following types of amendments should be avoided
    - Modifications that contradict the Agreement or General Conditions of the contract
    - Modifications that undermine the equitable balance of rights and obligations of the purchaser and supplier
    - Inconsequential or editorial modifications



- Modifications that attempt to substantially alter or adapt one form of contract for an unintended project delivery method
  - Provisions that do not pertain directly to the purchasing arrangement between the purchaser and supplier
- **Specification General Requirements (Division 01 Specifications)**
  - Specifies administrative and procedural requirements, such as:
    - Providing a summary of the work
    - Scheduling or phasing requirements
    - Work restrictions
    - Payment procedures and administrative requirements
    - Work quality requirements
    - Temporary facilities
    - Project closeout requirements
- **Technical Specifications (Division 02 – 49 Specifications)**
  - Typically prepared by a professional architectural or engineering consultant, these specifications set out detailed information about the materials and procedures to be used, as well as the quality and performance requirements for the work
  - Technical specifications must be properly coordinated with the drawings and schedules
- **Drawings, Details & Schedules**
  - Graphically show the scope of the work, location of the work, and how the work components come together
  - Drawings, details & schedules must be properly coordinated with the technical specifications
- **Addenda**
  - An addendum (singular form of addenda) is any modification made to the bid documents after they have been issued for bidding, but before the contract is signed
  - Addenda are typically undesirable and should be avoided whenever possible by including sufficient detail in the bid documents

The bid package will be provided to each bidder, and any addenda issued during the bidding process, are also considered to form part of the bid package.

## Creating a Bidders List

For condominium boards that wish to use a private bid, or invitational approach to bidding, a bidders list is required.

Bidders can be selected from suppliers who have successfully completed projects with the condominium in the past, or suppliers who have been recommended by a trusted

third party, such as the condominium manager/Head Office, architectural or engineering consultant, or even other condominiums in the area who have made similar purchases.

## Pre-qualification

It is often desirable to “pre-qualify” suppliers who will be invited to bid, especially on a large or complex procurement project, to ensure all suppliers who bid will be able to meet certain minimum criteria.

Pre-qualification criteria may include:

- *Corporate information* (e.g., size of company, dollar value of work completed, identities of shareholders/officers, financial information, bonding and insurance). Could also include *membership affiliation* (e.g., professional affiliations for consultants, or industry affiliations for contracting suppliers)
- *Qualifications and experience of personnel*
- *Project experience*
  - Recently completed major or comparable projects
  - Projects currently underway
- *Resources and capacity*
- *Company management and methods*
  - Internal quality assurance and quality control practices
  - Health, safety, sustainability, environmental protection, and/or regulatory compliance

Pre-qualification can save the condominium corporation time and simplify the bidding process by eliminating any suppliers without the capacity to perform the work prior to the bid evaluation process.

The condominium board should also *conduct a conflict check*, in which the condominium directors and condominium manager review the list of pre-qualified bidders and declare any conflicts that may exist.

Conflicted bidders may be removed from the list, and/or conflicted condominium directors or managers may be removed from the decision-making process.

# Step 4: Select and Run a Successful Procurement Process

## The Bidding Process

### Guiding Principles

Once bidding is underway there are several guiding principles that can assist the condominium board in designing a high-quality bidding process that is likely to yield high quality bids and prices.

These guiding principles include:

- Providing bidders with appropriate information and adequate time to prepare their bid;
- Ensuring that no bidder has an unfair advantage over another;
- Risks should be borne by the party (i.e., supplier or purchaser) best able to manage them (i.e., avoid asking suppliers to take on the risk of factors beyond their control, and conversely avoid accepting risk for factors within the supplier's control.);
- The bidding process should be kept as simple as possible;
- Contracts award decisions should be made fairly; and
- Follow standard practices and standard forms of contract whenever possible.

### Issuing the Bid

The condominium corporation should not issue a bid call unless they intend to award the contract, assuming the bids that are received are within the established budget. While it may be tempting to “test” the pricing or check the level of interest for a certain project, bid calls create a contractual relationship between the condominium corporation and the bidders.

If the condominium board does not intend to enter into a contract for goods or services, alternate methods exist to obtain accurate market costing, such as directly soliciting quotations from suppliers (e.g., if the desired outcome is just to obtain budget figures or “test the market”).

Types of bid calls include:

## **Invitational Bid Call**

In an invitational bid call, a call for bids is issued to a short list of pre-selected and generally pre-qualified bidders.

Typically, four to six bidders receive the invitation. In general, no fewer than three bids should be solicited. If four to six bids are requested it increases the likelihood that at least three will be received, as some bidders will decline to bid or may submit an improper bid.

To encourage all invited bidders to submit bids it is best practice not to solicit more than six bids.

## **Open Bid Call**

In an open bid call, the bid call is publicly advertised, typically online or through an electronic procurement service. Any interested bidder may submit a bid.

Open bid calls are often required for public sector organizations. However, in most cases they are not advisable for condominium corporations due to the increased cost and time commitments of administering and evaluating bids and increased difficulty of ensuring proper quality management practices.

For both types of bid calls, bid documents are typically provided to bidders in electronic form. It is left up to the bidders to print hard copies if required.

Bid documents are commonly issued by email or using an electronic procurement platform where bidders can download the electronic version of the bid documents.

## **Hosting a Bidder Information Session / Pre-bid Meeting**

For some projects that are large or complex, the condominium board may wish to consider hosting a bidder information session. The purpose of the session is to provide bidders with additional information about the nature of the project and the bid, as well as giving them the opportunity to examine the property and ask questions.

It is recommended that information sessions take place in person on the condominium's property and bidders are provided access to any areas relevant to the work they are being asked to bid on. Any questions answered during the information session should be distributed to all parties as an addendum, after the meeting.

Bidder information sessions could be mandatory or non-mandatory. Mandatory sessions are recommended for larger and more complex projects. Attendance should be taken at mandatory meetings. Any bids received from bidders that do not attend a mandatory information session should be rejected, unopened.

## Answering Questions from Bidders

Bidders will often ask questions to clarify the scope of work or intent of the bid documents. This is a helpful exercise for all parties because it allows the condominium board to understand how the project is perceived and any issues with the bid documents. It also provides information to the prospective bidders, which should help them clarify their proposed approach and pricing.

Any new information not contained in the bid documents should be issued as addenda to all bidders.

If a bidder asks a question relating to an item already discussed in the bid documents, the bidder may simply be referred to the relevant portion of the bid documents.

An addendum does not have to be issued if no new information has been provided.

Any addendum that substantially modifies the scope of work should also extend the bidding period, to allow bidders time to appropriately price the new work. This is described below.

## Bidding Period

Between the time the bid is called and when the bid “closes” (i.e., the deadline for receiving the bids), there should be enough time for bidders to review the documents, view the site if appropriate, ask questions, and provide pricing. This period of time is called the *bidding period* and is the time during which bids will be accepted by the corporation.

The bidding period can vary from as little as two (2) weeks, to as much as six (6) weeks, depending on the size and complexity of the project.

It is not recommended to provide less than two (2) weeks or more than six (6) weeks, as it may adversely affect the competitiveness of the bid.



Sometimes it may be necessary to extend the bidding period, in which case all bidders should be notified of the new closing date by addendum as early as possible.

Reasons for extending the deadline:

- If the bid relies on a special product from a single source supplier, it may be necessary to extend the bidding period if that supplier is unable to provide pricing within the timeframe allowed by the bid.
- Some bid calls do not produce the quality or quantity of bids desired by the condominium corporation by the deadline. In this case, the condominium board can decide whether an extension of the deadline might generate more interest.
- Questions asked by prospective bidders may substantially change the scope of work or may bring to light issues with the bid documents. Should this happen, the condominium board should consider extending the bid closing deadline to allow all bidders to make any necessary changes to their bids.

## **Permissible Bid Submissions**

Bid submissions have traditionally been hard copies provided in a sealed envelope, prior to the bid closing deadline. However, electronic bid submissions are increasingly being used instead of hard copy bids.

Electronic bids are most often accepted by email, although sometimes they are uploaded to secure bid portals. Electronic bids can be more convenient, easier to ensure they are received correctly, and more securely. However, care must be taken to ensure the integrity of the bid process.

Like hard copy bids, electronic bids should not be able to be viewed by other bidders or the purchaser in advance of the bid closing. This can be achieved in different ways, such as providing an exact time the bid must be sent (e.g., from 2:59 pm to 3 pm), using a “lock and key” approach (e.g., providing a password protected file and then supplying the password after the bid closing), or by using a trusted third-party online portal or website that conceals the bids until they have closed.

## **Receiving Bids**

When receiving bids, there are some tips that condominium boards should keep in mind:

- The bid closing date and time should be clearly set out in the bid documents;
- All bids should be received in the same way – i.e., the same physical location or the same electronic submission method; and
- Physical bids should be time stamped upon receipt.

## **Step 5: Make the Purchase and Award the Contract**

Once the bidding period has concluded and bidding has closed, the condominium board will now move ahead with opening and evaluating the bids using the criteria previously defined.

### **General Considerations**

#### **Modified Bids or Withdrawn Bids**

Bidders are typically permitted to modify or withdraw their bids prior to the bid closing. Details explaining how a bid submission may be modified should be set out in the bid documents. Also:

- If a bid is modified, the most recent version of the bid should be retained, and earlier versions of the bid discarded or returned to the bidder unopened.
- Bid modifications or withdrawals are not permitted after the bid closing.
- Any modified bid received after the bid closing deadline should be discarded or returned to the bidder unopened.

#### **Late Bids**

Bids received after the bid closing time are non-compliant. They should be returned to the bidder unopened.

#### **Bid Opening**

Bids should be opened as soon as possible after the bid closing deadline, which means that the bid opening meeting should be scheduled ahead of time.

- Bids from open bid calls are typically opened in public and the results disclosed to all bidders.

- Bids from invitational bid calls are typically opened in private and the results are typically not shared between bidders. The bids may be opened by the condominium board or a delegated third-party (e.g., condominium management, architectural or engineering consultant, etc.)



### Pro Tip

Decide who will attend the bid opening meeting ahead of time. Any interested director should be allowed to attend the bid opening.

Regardless of who opens the bids, the opening should always be witnessed by two (2) or more individuals. The condominium manager may also attend unless there is a perceived conflict of interest.

If only one bid is received, it should still be accepted, provided the bid complies with all the bid requirements and is within the condominium's budget.

If for whatever reason the contract cannot be awarded based on a single bid (e.g., the by-laws prohibit this practice), it should be returned to the bidder unopened.

## Evaluating Bids

After opening, all bids should be analyzed to ensure their completeness and compliance with the bid requirements.

## Bid Analysis and Evaluation

Architectural or engineering consultants retained by the condominium corporation will often provide a **Bid Analysis** to the condominium board, as part of their scope of services. A Bid Analysis will help identify any bid irregularities that may make the bid informal, incomplete, improper, or conditional, which may result in the bid being non-compliant.

Whether or not a formal bid analysis is performed by a consultant, the condominium board should perform a similar exercise including:

- All non-compliant bids should be removed before further evaluation is performed;
- Only bids that comply with the requirements of the bid documents should be reviewed. If the bid documents required a mandatory format, and one bid does



not conform to that format, it should be rejected no matter how strong the bid is; and

- Condominium boards should consider obtaining legal advice if it is unclear whether a bid is compliant with the bid documents. Improperly disqualifying a bidder or awarding a contract contrary to the requirements of the bid documents, may expose the condominium corporation to unacceptable liability, such as lawsuits from bidders.

### Pro Tip



Even the presence of a “privileged clause” (e.g., “the lowest or any bid will not necessarily be accepted”) may not change the obligations to award the contract to the lowest compliant bidder.

When in doubt, always consult with a lawyer.

All bids should be evaluated based only on the criteria set out in the bid documents and made available to all bidders. The previously agreed bid criteria should be applied fairly and consistently.

Condominium boards should keep in mind that they have a legal duty of fairness towards all bidders.

*Note: It is understood that the bids will be evaluated solely on price unless other evaluation criteria have been explicitly stated to the bidders ahead of time*

## Keeping Good Records

Condominium directors are reminded that the decisions of the condominium board should be fully documented, including the process by which a shortlist of bidders were selected, the bid analysis form and final proposals.

Some procurement documents may form a record of the condominium corporation under section 55 of the Condo Act and/or O. Reg 13.1. Such records are subject to certain requirements for storage and retention. For more information on condominium records, please visit the CAO website by clicking [here](#).

## Interviewing Bidders

The condominium board should interview the bidder who either provided the lowest compliant bid, or who scored the highest once the bid evaluation criteria were applied.

If the condominium board retained a consultant to administer the project, they should be present when the bidder is interviewed.

In some circumstances, (for example, when it is believed the low bidder may have made a mistake and significantly under-priced their bid, or when there is no bidder who clearly scored the highest once the evaluation criteria were applied), it might make sense to interview multiple bidders.

During the interview, the bidder should be asked to provide information about their company and explain their understanding of the project in order to demonstrate an understanding of the project requirements and the corporation's needs.

### Pro Tip



Bidders may be rejected if an obvious error is discovered in their bid.

However, there may be circumstances where condominium boards feel like the bidder is not the right "fit" for the project.

Condominium corporations should consider consulting their legal counsel to determine what options are available to them.

If the condominium board would like to review certain literature or product samples, the condominium board should request that the bidder bring these with to the interview.

## Checking References

Obtaining references is a best practice and the condominium board should secure references as part of its bid package, or wait until the interview stage.

The condominium board typically contacts the references for each bidder after the interview and uses the responses in their final selection process and discussions. It should be noted that referees are nearly always strong advocates for the bidder. However, they can be used to understand the bidder's working style, strengths and weaknesses which may help the condominium board decide whether the bidder is a good fit or has the right soft skills to be successful.

## Negotiating with Bidders

Attempting to negotiate with bidders *after compliant bids are received within the pre-established budget* is not an advisable practice.

Doing so could unnecessarily compromise the integrity of the bid and increase the overall project risk by introducing project scope modifications or material substitutions not recommended by the design expert.

**The above advice applies to the base scope of work; however, condominium boards may have success negotiating over alternate work items or “extras” that are not part of the base bid scope of work.**

If the bids received exceed the anticipated project budget established by the condominium board, they may approach the lowest bidder to identify potential changes to the scope or quality of work that may reduce their overall bid price.

### Pro Tip



While the condominium corporation may have the right to accept a low bid from a supplier who makes a significant pricing error, this is strongly discouraged.

It will force a supplier to undertake work at a loss, which substantially increases the project risk.

If a satisfactory solution is reached, the changes can be documented in a post-bid addendum.

If a satisfactory solution cannot be reached with the lowest bidder, all bidders may be invited to re-bid on a modified scope of work.

Re-bidding should be avoided, if possible, as the condominium corporation will usually end up paying for the additional time and costs incurred by the bidders.

If the condominium board wishes to not accept any bid and approach a new group of bidders, they must wait for the bid exclusivity period to expire (e.g., typically from 30 to 60 days from when the bid closed).

## Selecting the Successful Bidder

It is up to the condominium board to make the final decision on which bidder the work should be awarded to.

Once a bidder is selected, the contract should be awarded to the successful bidder during the specified *acceptance period*, which is typically the same as the exclusivity period mentioned previously. The acceptance period (e.g., 60 to 90 days) ensures that bidder pricing is guaranteed to be valid, and the bid cannot be revoked by the bidder.

If for whatever reason a decision cannot be made during the acceptance period, the bidders may be asked to extend the irrevocability period of their bids, however, they are not obligated to do so.

## Notifying Unsuccessful Bidders

Only after the successful bidder has been notified that their bid was accepted, it is a good practice and courtesy for condominium corporations to communicate with unsuccessful bidders that their bids were unsuccessful.

## Entering into a Contract for Goods and Services

There are several different ways for condominium boards to enter into contracts once the successful bidder has been selected:

- Quotations or proposals can be “signed back”, or condominium boards or managers can issue a purchase order;
- Bids can be responded to with a letter of bid acceptance or letter of intent, followed by signing the form of contract specified in the bid documents; or
- Custom contracts for services, typically on a recurring basis, will be entered into by signing the contract.

It is recommended that a formal letter of bid acceptance be issued from the condominium corporation to the successful bidder. This letter forms a legally binding contract between the condominium corporation (the purchaser) and the successful bidder (the supplier), based on the form of contract set out in the bid documents.

In the event the procurement process is not relying on a formal bid process with a pre-defined form of contract, the condominium board should sign a service agreement or issue a purchase order to award the contract.

### **Pro Tip**



Condominium boards are reminded to keep in mind that their lawyers should have already reviewed the bid documents and form of contract at an earlier stage.

Modifications to these documents cannot be made at this point without potentially invalidating the bid.

The condominium board may also issue a “letter of intent”, if they wish to accept a bid at a later date, or if there are conditions on acceptance of the bid such as approval of financing.

Condominium boards should always consult with their lawyers prior to issuing letters of bid acceptance, entering into service agreements, or issuing a letter of intent.

## **Starting the Project**

### **Establishing Good Project Management Practices**

In general, the condominium board should schedule a project kick-off meeting with all relevant parties, including themselves, any condominium management, representatives of the supplier, and any project consultants in attendance.

- If there is a consultant involved in the project, they would typically take the initiative to schedule and run the meeting;
- This project kick-off meeting should be used to set expectations for how the project will run. It should establish clear expectations for project communication and assign points of contact for each party, as well as emergency contact procedures; and
- The kick-off meeting can also be used to solicit all required project “start-up” documents from the supplier (e.g., insurance & WSIB), plus any other specified documents.

Condominium boards should ensure a valid certificate of insurance and WSIB clearance certificate is obtained before any work takes place. Insurance certificates should be forwarded to the condominium’s insurance expert (i.e., their broker or insurer) for review.

If the project specifications require bonding (e.g., labour & material or performance bonding) to be provided, hard copies of the bond documents (or properly sealed electronic copies) should be obtained prior to making any payment for services.

## **Contract Administration**

Contract administration is a critical quality assurance and control process for any work performed under a contract and is essential for any large or complex project.

Contract administration is typically carried out by architects, engineers, or other qualified project management professionals. Contract administration tasks will vary depending on the type of project, but will generally consist of:

- Holding regular meetings between the purchaser and supplier;
- Reviewing goods and services provided by the supplier to ensure compliance with the contract requirements and project specifications;
- Monitoring the project and issuing any documentation relating to any changes required to the work;
- Monitoring the progress and quality of the work and reporting back to the condominium board, including reporting any deficiencies or quality control issues;
- Reviewing the supplier's applications for payment to ensure invoicing complies with the requirements of the contract and agreed-upon payment schedule (typically referred to as "payment certification"); and
- Collecting and review final project deliverables, warranty documentation, product guarantees, etc.

## **Changes Impacting Price, Quality and/or Timing**

Even for projects where a specific price has been agreed, it is possible that conditions arise (or decisions are made) that may impact the price, quality, or timing of the work once a contract has been awarded.

All changes should be evaluated by the project's contract administrator and recommendations made to the condominium board for approval. Legitimate changes should be properly documented (typically as a "change order" and the contract time or price adjusted accordingly.

In condominium communities, there may be significant interest in larger projects, particularly those with workers on-site for longer periods of time. Owners and even condominium directors may need to be reminded that they should avoid asking workers for even seemingly minor changes, and that all changes have a potential cost impact.

## Payment Certification

Payment certification is a task performed by the contract administrator and ensures the condominium board only pays for work that is provided in accordance with the project specifications, and which is invoiced in accordance with the agreed-upon billing schedule. This is a powerful tool to help protect condominium boards from the risk of over-paying for work or paying for deficient work.

Payment certification can also help protect condominium boards from falling victim to scams where suppliers request large deposits and then do not deliver the promised goods or services.

## Prompt Payment

While invoices may be reviewed by a payment certifier, it is ultimately the condominium's responsibility to ensure invoices are paid in a timely fashion.

Under current prompt payment legislation, condominium boards must ensure all invoices for services that fall under the purview of the *Construction Act* (i.e., construction or renovation projects) are paid within 28 days of the invoice being received, or else issue a notice of non-payment to the supplier within 14 days of the invoice being received. Refer to the [Construction Act, R.S.O. 1990, c. C.30, Part I.1](#) for more information.

## Managing Claims and Disputes

While an effective procurement process and good project management are the first lines of defence, issues, claims and disputes may still arise. Typically, the way claims, and disputes will be handled is set out in the contract between the supplier and the purchaser.

There are many tools for handling claims and disputes, such as requesting the project consultant provide an interpretation of the contract or formal claims in a method prescribed under the contract. This could include Alternate Dispute Resolution (ADR) such as mediation or arbitration, or litigation.

Dispute resolution is a complex area of contract administration with many considerations. Condominium boards should consider obtaining expert advice on the management of any significant issues, claim or disputes that may arise.

# Step 6: Review and Monitor Purchasing Decisions

## Refreshing the Procurement Policy

As a best practice, a condominium board should review its procurement policy once a year. During this time, condominium directors should evaluate the policy for:

- **Scope.** Does the policy address all types of procurement efforts and practices in use by the condominium?
- **Comprehensiveness.** Does the corporation have a policy, and if so, does it include all relevant aspects of procurement, such as:
  - *Procurement Process and Methods.* The process by which purchasing decisions will be made, including approvals by the condominium board. It should also indicate when purchase orders are generated.
  - *Policy and Procedures.* (e.g., small purchases, large purchases, emergencies, competitive bidding, unsolicited bids / non-competitive procurement, etc.)
  - *Purchasing Authority/Thresholds related to key procurement types.* This section should include dollar values and/or percent (%) of budget for purchasing decisions.
  - *Mandatory or Required Practices.* (e.g., such as obtaining three quotes for purchases over a certain dollar value, or using CCDC standard construction contracts for all major capital projects)
  - *Conflict of Interest.* (If the corporation does not have another policy on this topic)
  - *Documentation and Record-Keeping.*
- **Accuracy.** Does the policy reflect the practices that are currently being used?
- **Legality.** Are all elements of the policy still in conformance to the condominium corporation's governing documents, as well as any applicable legislation?

Most years there will be no changes, or only minimal changes required to the policy. This does not mean that the policy should not be reviewed by the condominium board.

Once the review is complete, any suggested changes should be discussed and adopted by the condominium board through a vote, and the meeting minutes should reflect any changes to the policy. While not required, it is considered good practice to set out the



policy in a written formal document, such as would be done with any other condominium rule or policy.

## **Procurement Management Practices**

### **Documenting the Condominium's Contractual Obligations**

Each time the condominium corporation enters into a contract with another party, the condominium board should document in the meeting minutes the context and substance of the agreement. The condominium board may wish to consider keeping a spreadsheet of active contracts, so they have one source of information on the obligations of the company.

### **Tracking Warranties and Guarantees**

Any time a condominium corporation purchases a good or service, there is a chance that the product comes with a warranty or a guarantee.

Sometimes several years (or more than a decade) may pass before an event occurs that would allow for a claim under a warranty or guarantee. Because of this, it is possible that new condominium directors have been elected and others have retired. Or there may have been a change of condominium manager and the new one may not be aware of applicable warranties or guarantees. This can lead to paying for new services that would otherwise be covered by an existing warranty.

To avoid this scenario, the board could create a simple spreadsheet to track expired and active warranties, which can be kept up to date by the condominium board. This spreadsheet could include information like:

- The name and contact information for the supplier;
- The product or service purchased under warranty or guarantee;
- The scope of coverage of the warranty or guarantee;
- The limitations on the warranty (e.g., expiry date or other limitation such as the warranty only covers first 10,000 machine hours); and
- The location of the full policy detailing coverage.



Please note that the condominium corporation is also required to keep a record of all current and expired warranties and guarantees that the corporation receives and that relate to the property or any real or personal property that the corporation owns as per *section 13.1 (1) 8 of O. Reg. 48/01*.

For more information on records related to warranties and guarantees, including required retention periods, please review the [CAO Guide to Condo Records](#).

## Tracking Contract Renewal/Termination Dates

Many service contracts that run for long periods (generally one year or more) will contain a clause that specifies that unless one party terminates the agreement at a particular time that the agreement will automatically renew. Similarly, some contracts will automatically terminate on a particular date without being renewed.

Both of these outcomes can be problematic for the condominium board, depending on its goals. For example, the condominium board may be hoping to terminate a contract that auto-renews and accidentally miss the opportunity. Conversely, the condominium board may want to renew with a service provider and find that their service has been discontinued.

To avoid scenarios like this, the board should consider tracking its contract renewal and termination dates. This can take place in a spreadsheet that includes:

- The name and contact information for the supplier;
- The product or service contract to be renewed;
- The renewal terms (e.g., preferred pricing, renewal at least 3 months before anniversary date); and
- The location of the full contract.

## Assessing Past Procurement Experiences

### Assessing Bid Success

As a general practice, it is prudent for the condominium board to assess its success in bidding, from time to time. This means evaluating whether:

- A healthy number of bids is typically received (three (3) or more);
- Bids are typically within anticipated budgets;

- Selected suppliers complete projects on time;
- Selected suppliers complete projects to satisfactory quality; and
- No significant project failures have been experienced in recent years, and if so, a comprehensive evaluation has been performed (ideally, using an external consultant for total objectivity).

To determine whether the condominium board's procurement goals have been met, a tool (e.g., a spreadsheet) should be used.

A condominium director could be assigned to go through the last two (2) to three (3) years of bidding history and assemble the key facts of the results of each in a spreadsheet. Once the facts are assembled, they can be compared to each other during discussion and conclusions can be made about success in bidding.

If outside assistance is required, the board may wish to engage a professional such as an architect or engineer that regularly works with similar bids. They may be able to comment on whether the board is receiving competitive, high-quality bids. Other questions this process could answer are:

- Is there a strong pool of qualified bidders to draw from?
- For public bids, are we putting calls for bids in the right places? (e.g., websites, invitations, etc.)
- Do the same bidders keep submitting a bid? Do we get new bidders interested? Why or why not?
- Are there any strong bidders the board likes that are no longer bidding? Why?
- Is the quality of past bid documents acceptable? Has the board made any mistakes in bidding?
- Has the board ever been taken advantage of, because of poor wording in a bid?

## Special Purchasing Situations

Sometimes purchasing must happen under special circumstances, whether they are foreseen or not. When this happens, there is higher risk of quickly entering into an agreement with a supplier where scope, price, and other expectations are not well understood. Some examples include:

- **Emergency situations** (e.g., sudden leaks, flooding, elevator entrapment, etc.) – How will the board select a supplier and determine reasonability of price?
- **Directors are conflicted** – If a condominium director has a direct and known personal interest in a purchasing outcome, how will the condominium board remain objective?

- **Quorum is not met** – If the board, for unexpected reasons, is not able to meet quorum but must make an urgent purchasing decision, what will happen?
- **A bid process fails to generate adequate interest** – if the board cannot get a competitive bid for a service, how will it proceed? See Tip box below.

Answers to these questions will vary from condominium community to condominium community. Factors such as size of community, experience of the directors, location of building, and so on will affect decision making processes. What is most important is that the board discussed ahead of time for the most critical circumstances and purchases and agrees on a path forward.

The board may wish to plan for this eventuality by discussing and documenting ahead of time what will happen during certain situations. If the condominium board has a procurement policy in place, it is very important that the policy reflects the condominium board’s agreed approach in each situation.

### **Pro Tip: When No Bids are Received**

It can be frustrating and confusing when bid processes do not generate enough interest. This is relatively common occurrence and can rise in a few circumstances:

- When a bid process is launched at a very busy time of the year, and suppliers cannot make time to develop a bid.
- When bid documents and/or scope of work is not sufficiently clear or poorly written
- When bid process is unusually and/or unnecessarily restrictive, or when bidders are expected to perform extra work to participate in the bid process.
- When the bid documents or communications somehow convey that the corporation is “unfriendly” to suppliers, the proposed project may be too risky, or the board may be difficult to work with.
- When a specified budget is unrealistically low, for the scope of the work as defined.
- When the bid process is not well organized



When a bid process does not generate sufficient interest, the board should re-evaluate all aspects of the bid (e.g., documents, communications) to identify areas of improvement. If the invitational bid call was used, the board can also contact invited bidders to ask for feedback on the process and why they did not bid.

# Appendix A: Procurement Checklist for Directors

The following checklist corresponds with the procurement process outlined in this guide:

Key Procurement Steps	Related Activities
<p><b>Stage 1: Define the need and identify possible solutions</b></p>	<ul style="list-style-type: none"> <li>□ Identify and assess the purchasing need (e.g., day to day operational need or special project)</li> <li>□ Consider which purchasing option is best to meet the need (ideally competitive bidding for significant purchases)</li> <li>□ Establish timeline</li> <li>□ <a href="#">Using the flowchart here</a>, select the procurement approach (e.g., RFP, RFQ)               <ul style="list-style-type: none"> <li>□ Decide bid evaluation approach (by bid call method OR by evaluation criteria)</li> <li>□ If large capital project:                   <ul style="list-style-type: none"> <li>▪ Establish method of delivery (most commonly design-bid-build or design-build)</li> <li>▪ Determine contract type</li> <li>▪ Obtain industry-standard forms to be used (e.g., CCDC)</li> </ul> </li> </ul> </li> <li>□ Establish initial project scope or purchasing requirements</li> </ul>
<p><b>Stage 2: Develop a budget</b></p>	<ul style="list-style-type: none"> <li>□ Based on initial requirements or scope:               <ul style="list-style-type: none"> <li>□ For large projects or purchases:                   <ul style="list-style-type: none"> <li>▪ Identify support needed to assess feasibility of the project</li> <li>▪ Obtain budget estimate from advisors</li> </ul> </li> <li>□ For smaller purchases:                   <ul style="list-style-type: none"> <li>▪ Perform high-level research or informal consultations with experts</li> <li>▪ Assess budget range</li> <li>▪ Decide a budget</li> </ul> </li> </ul> </li> <li>□ If initial budget estimates are too high, consider increasing project budget or reducing scope to align spending with financing available</li> <li>□ Finalize project budget</li> <li>□ Document intent to procure (e.g., board approves budget and documents need in the minutes / board papers)</li> </ul>

<p><b>Stage 3: Form the purchasing committee</b></p>	<ul style="list-style-type: none"> <li>□ Decide If board will oversee OR delegate to special purchasing committee</li> <li>□ If committee: <ul style="list-style-type: none"> <li>□ Decide composition of board committee</li> <li>□ Prepare Terms of Reference</li> <li>□ Invite members</li> <li>□ Confirm role of committee (ideally, recommendation only, and reporting to the board)</li> </ul> </li> <li>□ Board approves establishment of committee and its composition</li> </ul>
<p><b>Stage 4: Design bid process and prepare bid package</b></p>	<ul style="list-style-type: none"> <li>□ Gather and document legal requirements and compliance items</li> <li>□ Confirm expected project timing and procurement timeline (allow a few months to over a year)</li> <li>□ Design a fair and transparent process</li> <li>□ Draft scope of work, detailed specifications and/or other documents for inclusion in package: <ul style="list-style-type: none"> <li>□ List bidder/supplier requirements (e.g., insurance coverage, bonding, form of contract, etc.)</li> <li>□ Develop bid evaluation criteria and scoring</li> </ul> </li> <li>□ Assemble / prepare bid package</li> <li>□ Require a common proposal format to allow for easy and comparable evaluation of the bids (i.e. all bids should be identical for an apples to apples evaluation). It is recommended that the board consider including a standard form template for the bidders to complete.</li> <li>□ Create a bidders list (for private / invitational bids) and obtain contact information</li> <li>□ For large projects, pre-qualify suppliers if possible</li> <li>□ Board should re-confirm its intent to proceed</li> </ul>
<p><b>Step 5: Communicate to board and owners</b></p>	<ul style="list-style-type: none"> <li>□ Assess project risks and mitigation strategies</li> <li>□ Design key communication messages and agree on an owner engagement process</li> <li>□ Distribute notifications to owners with business case if applicable (which typically includes the rationale for the purchase, expected benefits, options being considered and process to be followed, budget, etc.)</li> </ul>

<p><b>Step 6: Run the procurement process</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Announce / issue the bid (open the process for bidding)</li> <li><input type="checkbox"/> Hold pre-bid meeting, hold site visits</li> <li><input type="checkbox"/> Gather and answer questions from bidders</li> <li><input type="checkbox"/> Receive bids through open bidding period (make sure to document date/time received)</li> <li><input type="checkbox"/> At end of bid period, close bidding.</li> <li><input type="checkbox"/> Maintain good records of the process</li> </ul>
<p><b>Step 7: Receive/review bids and select the successful bidder</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Set up board or committee meeting to open and review bids</li> <li><input type="checkbox"/> Using bid evaluation criteria defined in Stage 4: <ul style="list-style-type: none"> <li><input type="checkbox"/> Perform bid analysis (e.g., total bids received, non-compliant and should be rejected, versus compliant and eligible for consideration)</li> <li><input type="checkbox"/> Review individual bids and compare to criteria</li> <li><input type="checkbox"/> Agree on shortlist of bidders or bidder that meets the board's criteria</li> </ul> </li> <li><input type="checkbox"/> Arrange interview of bidder(s)</li> <li><input type="checkbox"/> Collect and check references</li> <li><input type="checkbox"/> Negotiate with bidder</li> <li><input type="checkbox"/> Finalize bid price and terms with bidder and document agreement</li> <li><input type="checkbox"/> Recommend final selection to board for approval</li> </ul>
<p><b>Stage 8: Award the contract</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Obtain legal review/advice before entering into contract or issuing letter of intent</li> <li><input type="checkbox"/> Notify successful bidder of bid acceptance</li> <li><input type="checkbox"/> Notify unsuccessful bidders</li> <li><input type="checkbox"/> Enter into goods/services contract</li> <li><input type="checkbox"/> Close the process</li> </ul>
<p><b>After the process concludes:</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Make the purchase or begin project: <ul style="list-style-type: none"> <li><input type="checkbox"/> Implement good project management practices</li> <li><input type="checkbox"/> Communicate outcome and progress to owners</li> <li><input type="checkbox"/> Establish good contract administration practices</li> <li><input type="checkbox"/> Agree payment terms and ensure purchase terms and key warranty information is recorded</li> </ul> </li> </ul>

	<ul style="list-style-type: none"><li>□ Board should reflect on the process for areas to improve, as well as ensure other governance items are optimized:<ul style="list-style-type: none"><li>□ Review and monitor past purchasing decisions:<ul style="list-style-type: none"><li>▪ Past bid success</li><li>▪ Special purchasing situations</li></ul></li><li>□ Establish healthy procurement management processes are in place<ul style="list-style-type: none"><li>▪ Procurement policies</li><li>▪ Tracking warranties and guarantees</li><li>▪ Tracking contract renewal / expiry dates</li></ul></li></ul></li></ul>
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