

Authority: Policy and Finance Committee Report No. 3, Clause No. 4, adopted as amended,
by City of Toronto Council on February 29, March 1 and 2, 2000
Enacted by Council: March 2, 2000

CITY OF TORONTO

BY-LAW No. 151-2000

A By-law to Establish Procedures and Authority for the Procurement of Goods and Services and to Repeal Interim Purchasing By-law No. 57-1998, as amended.

WHEREAS the Council of the City of Toronto enacted By-law No. 57-1998 as an interim by-law for the procurement of goods and services; and

WHEREAS it is desirable to enact a new by-law continuing the procedures established under the interim by-law with additional modifications;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. Definitions

In this By-law:

“Award” means the acceptance of a Bid or a Proposal by the Purchasing Agent, Department Head, the Bid Committee, Standing Committee or Council pursuant to the terms of this By-law;

“Approval by Council” means the funding approval authorized by the adoption of interim or final operating budgets or the capital budget and includes the approval of a project in a capital budget by the council of one of the former municipalities prior to amalgamation;

“Bid” means a formal price response to a Call issued by the City;

“Bid Committee” means the committee established under section 6 of this By-law;

“Bidder” means any legal entity submitting a competitive Bid in response to a Call by the City;

“Call” means Solicitation from the City to external suppliers or providers to submit a Tender or a Quotation;

“Commitment” means a contractual obligation for the purchase of goods, services or construction, including the execution of any document, in compliance with clause 4(1)(a), evidencing the obligation;

“Cooperative Purchasing” means procurement conducted by the Purchasing Agent on behalf of the City and one or more Public Agencies or the involvement of the Purchasing

Agent in procurement by other Public Agencies which includes procurement on behalf of the City;

“Department Head” means any of the commissioners appointed by City Council with administrative responsibility for a department and includes the City Auditor and any person authorized by Council to act in the place of any of the commissioners or the City Auditor;

“Departmental Direct Purchase Limit” means the maximum dollar amount that any Department Head may expend to procure goods and services directly rather than through the offices of the Purchasing Agent, such amount not to exceed \$10,000 or such increased amount as approved by the Chief Administrative Officer in accordance with subsection 5(3);

“Director” means a person holding the management divisional position of General Manager, Executive Director or Director within a Department and includes the Fire Chief, Deputy Fire Chief, Medical Officer of Health, Associate Medical Officer of Health, the City Solicitor and City Clerk;

“Financial Control By-law” means By-law No. 152-2000, or successor by-law;

“Project” means the construction, repair or demolition of any improvement in or on real property including all costs normally associated therewith or any other work or undertaking;

“Proponent” means any legal entity submitting a Proposal in response to a Request issued by the City;

“Proposal” means an offer to furnish goods, services or construction, including professional or consulting services, as a basis for negotiations for entering into a contract;

“Public Agency” means any local board and commission and any non-profit corporation or municipal or government body carrying out a public function;

“Purchasing Agent” means the person holding the position of Director of Purchasing and Materials Management in the Finance Department and whose responsibility it is to supervise and carry out the procurement function on behalf of the City as per this by-law, and includes his or her designate;

“Quotation” means an offer to buy or supply specified goods or services at a price fixed as to the total amount or on a unit basis, or both;

“Request” means a solicitation from the City to external suppliers or providers to submit a Proposal;

“Solicitation” means the process of notifying prospective Bidders or Proponents that the City wishes to receive offers through a Bid or Proposal;

“Standing Committee” means any of the Standing Committees established under the City’s Procedural By-law, By-law No. 23-1998, as amended, or successor by-law;

“Tender” means an offer in respect of a Project at a price fixed as to total amount or on a unit basis, or both, and where all of the material terms, conditions and specifications to be met for the Project, aside from price and, in some cases, time for completion, are contained in the Call and determined at the time a bid is opened so that there is no prospect of negotiations between the parties; and

“Treasurer” means Chief Financial Officer and Treasurer of the City of Toronto.

2. Applicability

The provisions of this By-law shall apply to all City Departments.

3. Ethics in Purchasing

In addition to any conflict of interest policy applicable to employees, as adopted by Council from time to time, the code of purchasing ethics established by the National Institute of Governmental Purchasing Inc. and the Purchasing Management Association of Canada shall apply to all staff involved in the procurement process.

4. Purchasing Agent

(1) The Purchasing Agent shall be responsible for:

- (a) determining, in consultation with the City Solicitor where necessary, and in accordance with policies and directives as may be provided from time to time by Council, the appropriate form and method by which all goods and services shall be procured on behalf of the City;
- (b) compiling and maintaining a compendium of all policies adopted by Council from time to time affecting the procurement process and communicating such policies to Bidders and all staff involved in the procurement process;
- (c) the Solicitation of goods, services or construction;
- (d) determining the method of Solicitation, including without limitation, by public advertising, mailing invitations, posting notices, telephone or facsimile messages or any combination or all of these;

- (e) scheduling the place, date and time for the receipt and opening of Quotations and Proposals and, in consultation with the Clerk, the place, date and time for the receipt and opening of Tenders and the making of Awards;
 - (f) determining whether recommendations for an Award should appropriately go to the Bid Committee or Standing Committee as the case may be and as determined by this by-law;
 - (g) reporting to the Bid Committee on all Bids or Proposals where the Bid Committee has authority to make an Award;
 - (h) providing advice and support to the Bid Committee;
 - (i) reporting on, along with the Department Head who initiated the Request or Call, all Bids or Proposals which may not be awarded by the Bid Committee to the appropriate Standing Committee of Council;
 - (j) generally monitoring, supervising and reporting to the Administration Committee, as required from time to time, on the procurement process; and
 - (k) act on behalf of Public Agencies when requested to do so by such bodies and where authorized by Council.
- (2) The Purchasing Agent shall be authorized to make an Award arising from the issuance of a Call or Request and enter into a Commitment in respect of the Award provided that the Award and Commitment is within the maximum dollar amount of any commitment authority delegated to staff, and that funds are available in the appropriate account, under the provisions of the Financial Control By-law, or any successor by-law and has the Approval by Council.
- (3) The Purchasing Agent shall be authorized to enter into a Commitment without the issuance of a Call or Request under the following circumstances:
- (a) when an event occurs that is determined by a Department Head or the Chief Administrative Officer to be a threat to public health, the maintenance of essential City services, the welfare of persons or of public property or the security of the City's interests and the occurrence requires the immediate delivery of goods or services and time does not permit for an Award, other than by the Purchasing Agent;

- (b) when competition in respect of the goods and services is precluded because of the existence of a sole source, patent rights, copyrights, secret processes, control of basic raw material or similar restrictions;
or
 - (c) when, in the opinion of the Purchasing Agent, a fluctuating market for goods and services exists and the issuance of a Request or Call would adversely affect the interests of the City given rising market prices.
- (4) Where the dollar amount of any Commitment entered into under subsection 4(3) is not within the maximum dollar amount of any commitment authority delegated to staff under the provisions of the Financial Control By-law, the Purchasing Agent shall report to Council through the Administration Committee at the earliest opportunity after entering into the Commitment.
- (5) Quotations and Proposals received by the Purchasing Agent in the location specified in the Request before the time stipulated therein for receipt, shall be opened by the Purchasing Agent at the time and location specified in the Request, and the names of the Bidders and Proponents shall be read out. The prices bid on Calls only, where appropriate in the discretion of the Purchasing Agent, shall also be read out. The prices bid on Requests shall not be read out. All Bidders and Proponents and other interested members of the public shall be entitled to be present when the information is read out.
- (6) The Purchasing Agent shall be authorized to cancel any Call or Request when requested by the Department Head who initiated the Call or Request and where:
- (a) Bids or Proposals received are greater than the Approval by Council; or
 - (b) in the opinion of the Department Head responsible for the Call or Request,
 - (i) a change in the scope of work or specifications is required and therefore a new Call or Request should be issued, or
 - (ii) the goods or services to be provided by the Call or Request no longer meets departmental requirements.

5. Chief Administrative Officer and Department Heads

- (1) Despite subsection 4(2), a Department Head or Director is authorized to make an Award in respect of and enter into a Commitment for consulting services, subject however to such Commitment by a Department Head or Director, including amounts, being authorized under the provisions of the Financial Control By-law

which authorization may include any permitted delegation to the Department Head or Director from the Chief Administrative Officer.

- (2) A Department Head is authorized to make an Award and enter into a Commitment that is within the Departmental Direct Purchase Limit. Department Heads may further delegate such authority to a Director or other designate.
- (3) The Chief Administrative Officer is authorized to determine from time to time, in consultation with the Treasurer and the Purchasing Agent, any increase to the Departmental Direct Purchase Limit.
- (4) A Department Head or Director, as the case may be, may be responsible for Solicitation in respect of an Award authorized under this section if such Solicitation is explicitly authorized by the Purchasing Agent and is otherwise in accordance with the form and method of procurement determined by the Purchasing Agent under clause 4(1)(a).
- (5) When an event occurs that is determined by a Department Head or the CAO to be a threat to public health, the maintenance of essential City services, the welfare of persons or of public property, the security of the City's interest, or financial liability arising from environmental conditions, and the occurrence requires the immediate delivery of goods and services and time does not permit for the department to allow the Purchasing Agent to acquire such goods and services, the Department Head may make such purchases without the involvement of the Purchasing Agent. The Department Head must advise the Purchasing Agent and the CAO of such purchases and report such purchases to the appropriate Standing Committee or Council in accordance with the provisions of this by-law. The Department Head shall report to Council through the appropriate Standing Committee at the earliest opportunity after making the purchase.

6. Bid Committee

- (1) There is hereby established a Bid Committee comprised of the following persons:
 - (a) the Chief Administrative Officer or his or her designate;
 - (b) the Chief Financial Officer and Treasurer or his or her designate;
 - (c) any Department Head who initiated the Call or Request that is before the Committee at any given meeting or part thereof, or his or her designate;
and
 - (d) the City Clerk or his or her designate.

- (2) The City Clerk shall not have a vote but shall act as the chair of the Bid Committee.
- (3) A Department Head referred to in clause 6(1)(c) is only entitled to vote in respect of the particular Call or Request which the City official initiated.
- (4) The City Solicitor, or his or her designate, shall provide legal advice to the Bid Committee when required.
- (5) A quorum of the Bid Committee shall be 2 voting members.
- (6) All business and decisions of the Bid Committee shall be conducted and made at meetings open to the public subject to the confidentiality provisions of the *Municipal Freedom of Information and Protection of Privacy Act* and of the *Municipal Act*.

7. Duties of the City Clerk

The City Clerk shall be responsible for

- (a) maintaining minutes of each meeting of the Bid Committee; and
- (b) distributing, prior to each meeting of the Bid Committee, the agenda for the meeting together with the minutes of the last previous meeting to each member of Council, each member of the Bid Committee, the Purchasing Agent, the City Solicitor and other appropriate City officials.

8. Duties of the Bid Committee

- (1) Tenders received by the Clerk in the location specified in the Call before the time stipulated therein for the close of Tenders shall be opened at a meeting of a Bid Committee and the names of the Bidders and the prices offered by each, or a summary thereof, shall be read aloud and recorded by the Chair of the Bid Committee.
- (2) The Bid Committee is authorized to make an Award in respect of a Bid, if all of the following conditions are met:
 - (a) the Purchasing Agent, after consulting with the City official who has initiated the Call, has recommended the Award in the report submitted under clause 4(1)(i) as being in compliance with the terms of the Call;
 - (b) the amount of the Award is equal to or less than the Approval by Council and is equal to or less than \$1 million;

- (c) the Award is to the lowest bidder whose Bid meets the specifications and requirements set out in the Call;
 - (d) there is no written objection to the Award filed with the Bid Committee before the Award is made; and
 - (e) all voting members of the Bid Committee who are present at the meeting vote in favour of the Award.
- (3) The Bid Committee is authorized to make an Award in respect of a Proposal, where;
- (a) the scope of the subject work is defined in the Request;
 - (b) the requirements and specifications contained in the Request allow for a representative response from the industry or corporate sector being solicited;
 - (c) the evaluation criteria are set out in the Request;
 - (d) the Purchasing Agent, after consulting with the City official who has initiated the Request, has recommended the Award in the report submitted under clause 4(1)(i) as being in compliance with the requirements of the Request;
 - (e) the conditions contained in Clauses 8(2)(b), 8(2)(d) and 8(2)(e) are met; and
 - (f) the Award is made only to the Proponent meeting the requirements of the Request while offering the lowest price for the scope of work.

9. Standing Committee and Council

- (1) If all the conditions set out in subsections 8(2) or 8(3) are not met or where the Bid Committee does not make an Award that it is authorized to make, the Bid or Proposal shall be referred to the Standing Committee of Council responsible for the program or service to which the Call or Request is related, in accordance with the provisions of Procedural By-law No. 23-1998, as amended from time to time.
- (2) Bids or Proposals referred to a Standing Committee shall be reported upon to the Standing Committee by the Purchasing Agent and the Department Head on whose behalf the Request or Call was made and, where necessary, the City Solicitor.

- (3) A Standing Committee to which a Bid or Proposal is referred under subsection 9(1) shall
 - (a) be authorized to make an Award if,
 - (i) the conditions specified in subsection 8(2) or in subsection 8(3), as applicable, are met with the exception of the monetary limit set out in clause 8(2)(b), and
 - (ii) the amount of the Award is equal to or less than the Approval by Council and is greater than \$1 million and less than or equal to \$5 million, or
 - (b) make a recommendation to Council.
- (4) Where a Standing Committee has made an Award under subsection 9(3), the Award shall be reported to Council for information.
- (5) An Award that does not meet the requirements of subsection 8(2), 8(3) or clause 9(3)(a) shall be made by Council.

10. Bid Committee - Extended Authority

- (1) If Standing Committee or Council meetings are cancelled or their normal meeting schedule interrupted because of a labour disruption or, if during the summer recess of Council, no Standing Committee meetings are scheduled or held, the Bid Committee is authorized to exercise the power of a Standing Committee to make an Award as set out in clause 9(3)(a).
- (2) If the Bid Committee makes an Award under subsection 10(1), the Award shall be reported by the Purchasing Agent to Council through the Administration Committee.

11. Sale or Disposal of Surplus Materials or Equipment

- (1) If any materials or equipment owned by the City are declared by the Department Head having control over them to be surplus to present and future departmental requirements, and are declared by the Purchasing Agent to be surplus to present and future corporate requirements, the Purchasing Agent may either dispose of the materials or equipment by public auction or Solicitation deemed appropriate by the Purchasing Agent in the circumstances. Funds received for the disposal of surplus materials and equipment will be credited back to the department having control over the surplus materials or equipment disposed.

- (2) If the Purchasing Agent and the Department Head concerned are of the opinion that the highest competitive bid for surplus materials or equipment received in response to a Call or Request represents a fair or favourable price, the surplus materials or equipment may be transferred to that bidder upon payment of the price by cash or certified cheque or by cancellation of an equivalent amount of corporate indebtedness toward that bidder at the time of the transfer, or by any combination of them.
- (3) No surplus materials or equipment shall be disposed of except as follows:
 - (a) in accordance with subsections 11(1) and 11(2);
 - (b) by way of trade-in at fair market value as part of the acquisition of other materials or equipment; or
 - (c) as Council may otherwise authorize.

12. Cooperative Purchasing

- (1) The Purchasing Agent may participate with Public Agencies in Cooperative Purchasing.
- (2) Participation in Cooperative Purchasing shall be in compliance with the provisions of this By-law to the extent that procurement results in a Commitment on behalf of the City.

13. Access to Bids

The contents of any Bid shall be made available to the public, on request, except to the extent such information is confidential information protected from disclosure under the provisions of the *Municipal Freedom of Information Protection of Privacy Act*.

14. Environmental Procurement

All Calls, Requests and Solicitations shall have regard to the City's Environmental Procurement Policy.

15. Transition

- (1) Interim Purchasing By-law No. 57-1998 as amended is repealed.
- (2) Notwithstanding subsection 15(1), the provisions of Interim Purchasing By-law No. 57-1998 shall continue to apply to Calls or Requests issued prior to the date of enactment of this By-law and such provisions are incorporated in this By-law for that purpose.

ENACTED AND PASSED this 2nd day of March, A.D. 2000.

CASE OOTES,
Deputy Mayor

NOVINA WONG,
City Clerk

(Corporate Seal)