

Authority: Administration Committee Report No. 5, Clause No. 7,
as adopted by City of Toronto Council on July 20, 21 and 22, 2004
Enacted by Council: September 30, 2004

CITY OF TORONTO

BY-LAW No. 779-2004

To amend City of Toronto Municipal Code Chapter 195, Purchasing.

WHEREAS the City has undertaken a procurement process review to identify efficiency and accountability improvements and as part of that review has identified changes to the Purchasing By-law;

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

1. The City of Toronto Municipal Code is amended as follows:
 - A. By repealing Chapter 195, Purchasing.
 - B. By adding the following as Chapter 195, Purchasing:

Chapter 195

PURCHASING

§ 195-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AWARD — The acceptance of a bid or a proposal by the Chief Purchasing Official, Chief Administrative Officer, department head, any designate of the Chief Administrative Officer or department head, a director, the Bid Committee, standing committee or Council pursuant to the terms of this chapter.

BID — A formal price response contained in a tender or quotation.

BID COMMITTEE — The committee established under § 195-11.

BIDDER — Any legal entity submitting a competitive bid, a pre-qualification submission preliminary to a bid or an expression of interest in response to a call by the City.

CALL — Solicitation from the City to external suppliers or providers to submit a tender, quotation, proposal, pre-qualification submission or expression of interest.

CHIEF ADMINISTRATIVE OFFICER — The Chief Administrative Officer of the City.

CHIEF PURCHASING OFFICIAL — The person holding the position of Director of Purchasing and Materials Management in the City's Finance Department and whose responsibility it is to supervise and carry out the procurement function on behalf of the City in accordance with this chapter, and includes his or her designate.

COMMITMENT — A contractual obligation for the purchase of goods, services or construction, including the issuance of a purchase order or the execution of any agreement evidencing the obligation, in compliance with § 195-5(1).

COMMITMENT LIMIT — A maximum term of five years in respect of a commitment or, in respect of a project commitment, the projected term of capital funding for the project as set out in a capital budget approved by Council.

CONSTRUCTION — The construction of any improvement in or on real property and includes the repair, renovation or demolition of any improvement.

CO-OPERATIVE PURCHASING — Procurement conducted by the Chief Purchasing Official on behalf of the City and one or more public bodies, or the involvement of the Chief Purchasing Official in procurement by other public bodies which includes procurement on behalf of the City.

DEPARTMENT — An organizational unit of the City headed by a department head.

DEPARTMENT HEAD — Any of the Commissioners appointed by City Council with administrative responsibility for a department and includes the Auditor General and any person authorized by Council to act in the place of any of the Commissioners or the Auditor General.

DEPARTMENTAL PURCHASE LIMIT — The maximum dollar amount that any department head may expend in any one instance to procure goods and services directly rather than through the offices of the Chief Purchasing Official, such amount not to exceed \$7,500 or such increased amount as approved by the Chief Administrative Officer in accordance with § 195-10D.

DIRECTOR — 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 the City Clerk.

EXPRESSION OF INTEREST — A submission in response to a call to determine the interest of the market place in providing a scope of work or services contemplated to be procured by the City;

FINANCIAL CONTROL BY-LAW — Chapter 71, Financial Control, of the Code or successor by-law.

FUNDING APPROVAL —

A. In relation to a project:

Inclusion of the project in a capital budget approved by Council and where the Treasurer provides written confirmation that he or she is satisfied that:

- (1) The entire capital expenditure for the project is identified in the budget at an appropriate project or subproject level; and
 - (2) The project's cash flow funding is available in an appropriate account.
- B. In relation to other than a project:
- (1) Funding approval of the relevant operating program by the Council adoption of interim or final operating budgets and where the Treasurer provides written confirmation that he or she is satisfied that the funding of the commitment, or the first year of a multi-year commitment, is available in an appropriate account; or
 - (2) In a situation where Council has not yet adopted an interim or final operating budget:
 - (a) The written confirmation of a department head that the commitment is in respect of necessary current and ongoing department operations and that the subject matter of the commitment was contained in a program that had funding approval in the prior year; and
 - (b) The written confirmation of the Treasurer that the funding of the commitment can be undertaken to his or her satisfaction.

MATERIAL WRITTEN OBJECTION — A written objection to an award that relates to the exercise of discretion of the Chief Purchasing Official in accepting or rejecting responses as being compliant or non-compliant with a call and which is not:

- A. Frivolous or vexatious in the opinion of the Chief Purchasing Official; or
- B. Solely related to a review of any listed irregularities that any City policy on procurement processes instructs or authorizes the Chief Purchasing Official to automatically reject.

PRE-QUALIFICATION SUBMISSION — The submission of qualifications by a bidder or proponent in response to a call as part of a process to determine those bidders or proponents that would qualify to be solicited in a subsequent call leading to an award.

PROJECT — An undertaking in respect of which an expenditure is incurred to acquire, improve demolish or maintain land, buildings, engineering structures, machinery and equipment, including installation of computer software, and is the level at which Council approves funding and funds control in the capital budget.

PROPONENT — Any legal entity submitting a proposal, a pre-qualification submission preliminary to a proposal or an expression of interest in response to a call.

PROPOSAL — An offer to furnish goods, services or construction, including professional or consulting services, as a basis for negotiations for entering into a contract.

PUBLIC BODY — Any local board and commission and any non-profit corporation or municipal or government body carrying out a public function and, in addition, any corporation of which the City is a shareholder.

QUOTATION — 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.

RESPONSE — The submission of a bid, proposal, expression of interest or pre-qualification submission in response to a call.

SOLICITATION — The process of notifying prospective bidders or proponents that the City wishes to receive offers through a bid or proposal or to receive pre-qualification submissions or expressions of interest.

STANDING COMMITTEE — A standing committee established under Chapter 27, Council Procedures, as amended, or successor by-law.

SUBPROJECT — A level within a project that a department head may use to track expenditures within the capital project.

TENDER — An offer in respect of a construction 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 construction 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.

TREASURER — The City's Chief Financial Officer and Treasurer.

§ 195-2. Monetary references.

All references in this chapter to dollar amounts are to Canadian dollars and shall be considered to be exclusive of taxes unless otherwise provided.

§ 195-3. Applicability.

The provisions of this chapter shall apply to all departments.

§ 195-4. 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.

§ 195-5. Authority, duties and responsibilities of Chief Purchasing Official.

The Chief Purchasing Official shall have, subject to Council policies and directives, the authority and be responsible for:

- A. Determining, in consultation with the City Solicitor where necessary, and in accordance with policies and directives as may be adopted or provided from time to time by Council, the appropriate form and method by which all goods, services and construction shall be procured on behalf of the City, including the form of any commitment, the circumstances and means for the pre-selection of equipment and materials, the pre-qualification of bidders or proponents, and the delegation to any or all departments of any aspect of the procurement process.
- 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 proponents and all staff involved in the procurement process.
- C. The Solicitation of goods, services or construction.
- D. Determining the method and scope 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 responses and, in consultation with the City Clerk, the place, date and time for the making of awards within the jurisdiction of the Chief Purchasing Official.
- 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 chapter.
- 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 that initiated the call, all bids or proposals which may not be awarded by the Bid Committee to the appropriate standing committee.
- J. Generally monitoring, supervising and reporting to the Administration Committee, as required from time to time, on the procurement process.
- K. Acting on behalf of public bodies when requested to do so by such bodies and where authorized by Council.

- L. Drafting and finalizing procedures and guidelines in respect of any aspect of the procurement process, including any of the listed responsibilities of the Chief Purchasing Official in this section, and ensuring appropriate communication of such procedures and directives to staff and to the public.
- M. Undertaking a comprehensive review of this chapter and all policies affecting the procurement process every five years.

§ 195-6. Authority of Chief Purchasing Official to pre-select and to pre-qualify.

The Chief Purchasing Official shall be authorized to determine:

- A. The selection of specified equipment and materials, if required in the opinion of the department head, for incorporation in any call; and
- B. In consultation with the department head initiating the call, those bidders and proponents meeting the requirements of any pre-qualification call as a basis for the issuance of any subsequent call for the submission of bids or proposals.

§ 195-7. Chief Purchasing Official and opening of responses.

Responses received by the Chief Purchasing Official in the location specified in the call before the time stipulated therein for receipt shall be opened by the Chief Purchasing Official at the time and location specified in the call, and the names of the bidders and proponents shall be read out. The prices contained in bids only, where appropriate in the discretion of the Chief Purchasing Official, shall also be read out. The prices contained in proposals 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.

§ 195-8. Cancellation of calls.

The Chief Purchasing Official shall be authorized to cancel any call where:

- A. There is a request by the department head who initiated the call and responses are greater than the funding approval for the commitment that would result from an award in respect of the call; or
- B. In the opinion of the department head or director responsible for the call:
 - (1) A change in the scope of work or specifications is required and therefore a new call should be issued; or
 - (2) The goods, services or construction to be provided by the call no longer meet the department's requirements; or
- C. In the opinion of the Chief Purchasing Official the integrity of the call process has been compromised.

§ 195-9. Authority of Chief Purchasing Official to award and enter into commitments.

- A. The Chief Purchasing Official shall be authorized, in consultation with the department head or designate initiating the call, to make an award arising from the issuance of a call and enter into a commitment in respect of the award, provided that the following conditions are met:
- (1) The award and commitment are:
 - (a) Within the commitment limit;
 - (b) Within the maximum dollar amount of any commitment authority delegated to staff under the provisions of the Financial Control By-law; and
 - (c) Have funding approval;
 - (2) The award is to the lowest bidder whose bid meets the specifications and requirements set out in the call or to the highest ranked proponent resulting from an evaluation and meeting the requirements of the call, including the evaluation criteria set out in the call; and
 - (3) There is no material written objection to the merits of the award filed by a bidder with the Chief Purchasing Official before the award is made.
- B. The Chief Purchasing Official shall be authorized to enter into a commitment without the issuance of a call under the following circumstances:
- (1) When an event occurs that is determined by a department head or the Chief Administrative Officer or a director 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 Chief Purchasing Official, provided that, in respect of a director's determination, the resulting commitment is within the commitment authority of the director under the provisions of the Financial Control By-law; or
 - (2) In accordance with the conditions for use of a non-competitive procurement process set out in any procurement policy as adopted by Council.
- C. Where the dollar amount of any commitment entered into under § 195-9B is not within the maximum dollar amount of any commitment authority delegated to staff under the provisions of the Financial Control By-law, the Chief Purchasing Official and the Chief Administrative Officer or department head shall report jointly to Council through the Administration Committee at the earliest opportunity after entering into the commitment.

§ 195-10. Chief Administrative Officer, department heads and directors.

- A. Despite § 195-9A, the Chief Administrative Officer or a department head, or his or her designate, is authorized to make an award and enter into a commitment:
- (1) For consulting services, where the commitment resulting from the award is within the spending authority for such persons under the provisions of the Financial Control By-law and in accordance with any policy on consulting services adopted by Council; and
 - (2) For all other goods, services or construction, where the commitment resulting from the award is within the departmental purchase limit.
- B. A commitment entered into under the authority of Subsection A must be within the commitment limit and have funding approval.
- C. The Chief Purchasing Official shall determine the form of commitment for procurement made within the departmental purchase limit.
- D. The Chief Administrative Officer is authorized to determine from time to time, in consultation with the Treasurer and the Chief Purchasing Official, any increase to the departmental purchase limit within the commitment authority delegated to the Chief Administrative Officer under the Financial Control By-law.
- E. The Chief Administrative Officer or a department head, or his or her designate, may be responsible for solicitation in respect of an award authorized under this section if such solicitation is explicitly authorized by the Chief Purchasing Official and is otherwise in accordance with the form and method of procurement determined by the Chief Purchasing Official under § 195-5A.
- F. When an event occurs that is determined by the Chief Administrative Officer or a department head or a director 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 Chief Purchasing Official to acquire such goods and services, the Chief Administrative Officer or department head or director may make such purchases without the involvement of the Chief Purchasing Official, provided that the resulting commitment is within the commitment authority of the authorizing person under the provisions of the Financial Control By-law. The Chief Administrative Officer or the department head or director must advise the Chief Purchasing Official, and in the case of a department head or director advise in addition the Chief Administrative Officer, of such purchases.

§ 195-11. Bid Committee.

- A. There is hereby established a Bid Committee comprised of the following persons:

- (1) The Chief Administrative Officer or his or her designate.
 - (2) The Chief Financial Officer and Treasurer or his or her designate.
 - (3) Any department head who initiated the call that is before the Committee at any given meeting or part thereof, or his or her designate.
 - (4) The City Clerk or his or her designate.
- B. The City Clerk shall not have a vote but shall act as the chair of the Bid Committee.
- C. A department head referred to in Subsection A(3) is only entitled to vote in respect of the particular call which the department head or his or her designate initiated.
- D. The City Solicitor, or his or her designate, shall provide legal advice to the Bid Committee when required.
- E. A quorum of the Bid Committee shall be two voting members.
- F. 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*.

§ 195-12. Duties of 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 Chief Purchasing Official, the City Solicitor and other appropriate City officials.

§ 195-13. Authority of Bid Committee.

- A. The Bid Committee is authorized to make an award in respect of a bid call, if all of the following conditions are met:
 - (1) The Chief Purchasing Official, after consulting with the City department head or designate who has initiated the call, has recommended the award in the report submitted under § 195-5G as being in compliance with the terms of the call.
 - (2) The award is within the commitment limit.
 - (3) In the opinion of the Treasurer, the award and resulting commitment have funding approval and the amount of the award is equal to or less than \$5 million.

- (4) In the opinion of the Chief Purchasing Official, the award is to the lowest bidder whose bid meets the specifications and requirements set out in the call.
 - (5) There is no material written objection to the merits of the award filed by a bidder with the Bid Committee before the award is made.
 - (6) All voting members of the Bid Committee who are present at the meeting vote in favour of the award.
- B. The Bid Committee is authorized to make an award in respect of a proposal call, where:
- (1) The Chief Purchasing Official, after consulting with the department head or designate who has initiated the call, has recommended the award in the report submitted under § 195-5G as being to the highest ranked proponent resulting from an evaluation and meeting the requirements of the call, including the evaluation criteria set out in the call;
 - (2) There is no material written objection to the merits of the award filed by a proponent with the Bid Committee before the award is made; and
 - (3) The conditions contained in Subsection A(2), (3) and (6) are met.

§ 195-14. Reporting on awards.

The Chief Purchasing Official shall report on a semi-annual basis through the Administration Committee to Council on all awards made by the Bid Committee in accordance with this chapter. The report shall include information on the names of all successful bidders and proponents and the amount of such awards.

§ 195-15. Authority of Standing committee.

- A. If all the conditions set out in §§ 195-9A or 195-13A or B are not met, or where the Bid Committee does not make an award that it is authorized to make, or where the Chief Purchasing Official together with the City official on whose behalf the call was made are of the opinion that the award should be made by Council, the bid or proposal shall be referred to the standing committee of Council responsible for the program or service to which the call is related, in accordance with the provisions of Chapter 27, Council Procedures, as amended from time to time.
- B. Bids or proposals referred to a standing committee shall be reported upon to the standing committee by the Chief Purchasing Official and the City official on whose behalf the call was made and, where necessary, the City Solicitor.
- C. A standing committee to which a bid or proposal is referred under Subsection A shall:
 - (1) Be authorized to make an award if the conditions specified in § 195-13A or B as applicable, are met with the exception of the monetary limit set out in

§ 195-13A(3) and with the vote on the award being subject to the usual voting requirements applicable to a standing committee; or

- (2) Make a recommendation to Council.

§ 195-16. Council.

An award that does not meet the requirements of §§ 195-9A, 195-13A or B, or 195-15C(1) shall be made by Council.

§195-17. Extended authority of Bid Committee.

- A. The Bid Committee is authorized to exercise the power of a standing committee to make an award in the following circumstances:
 - (1) If a regularly scheduled meeting of the standing committee to which the bid or proposal, as the case may be, would be normally reported for award is cancelled for whatever reason, including labour disruption, and there is no meeting of Council scheduled either prior to or within the week following the cancelled standing committee meeting to which the bid or proposal could be reported; or
 - (2) If, during the summer recess of Council or during the period between the last scheduled meeting of Council and the first meeting of a new Council after an election, no standing committee meetings are scheduled or held; and
 - (3) If the conditions specified in § 195-13A are met with the exception of the monetary limit set out in § 195-13A(3).
- B. If the Bid Committee makes an award under Subsection A, the award shall be reported by the Chief Purchasing Official to Council through the Administration Committee.

§ 195-18. Sale or disposal of surplus materials or equipment.

- A. 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 Chief Purchasing Official to be surplus to present and future corporate requirements, the Chief Purchasing Official may either dispose of the materials or equipment by public auction or solicitation deemed appropriate by the Chief Purchasing Official 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.
- B. If the Chief Purchasing Official 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 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.

C. No surplus materials or equipment shall be disposed of except as follows:

- (1) In accordance with § 195-16A and B;
- (2) By way of trade-in at fair market value as part of the acquisition of other materials or equipment; or
- (3) As Council may otherwise authorize.

§ 195-19. Co-operative purchasing.

- A. The Chief Purchasing Official may participate with public bodies in co-operative purchasing.
- B. Participation in co-operative purchasing shall be in compliance with the provisions of this chapter to the extent that procurement results in a commitment on behalf of the City.

§ 195-20. 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 and Protection of Privacy Act*.

§ 195-21. Procurement policies.

- A. All calls and solicitations shall have regard to the City's procurement policies as adopted by Council from time to time.
- B. The Chief Purchasing Official shall ensure that the City's procurement policies are posted on the City's website and are kept current.

§ 195-22. Delegation to General Manager Water and Wastewater Services.

The City's Commissioner of Works and Emergency Services may delegate to the General Manager of Water and Wastewater Services any authority or any part of any authority which has been delegated to the Commissioner under this chapter, to the extent that the Commissioner may see fit, subject to the same limits and conditions imposed upon the Commissioner under this chapter.

2. This by-law comes into force on November 1, 2004.

ENACTED AND PASSED this 30th day of September, A.D. 2004.

DAVID R. MILLER,
Mayor

ULLI S. WATKISS
City Clerk

(Corporate Seal)