

Unsolicited Quotations or Proposals – Revised Policy

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To:	Government Management Committee
From:	Treasurer
Wards:	All
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SUMMARY

The purpose of this report is to revise the City's policy for responding to unsolicited quotations or proposals. Essentially, the City's current policy is not to consider unsolicited quotations or proposals, however, it does allow for exceptional cases where a division head wishes to accept an unsolicited quotation or proposal. The acceptance can be done with Council approval. Recent events and recent Council requests have spurred staff to bring forward a more comprehensive policy for Council's consideration and approval.

The new policy proposed will still limit the circumstances under which unsolicited quotations or proposals will be considered. They should not be used to undermine or supersede the City's commitment to open, transparent and competitive procurement. In circumstances when an unsolicited quotation or proposal could be considered, the policy outlines comprehensive information requirements that must be met within the quotation or proposal. In effect, the vendor would be asked for the same amount of information as if they were submitting the proposal or bid to a Request for Proposal (RFP), Request for Quotation (RFQ) or Tender Call issued by the City. This section of the policy will ensure that frivolous quotations or proposals are screened out and that staff resources spent on evaluating viable quotations or proposals are economized.

This report also addresses the issue of renewing leases for Parks Forestry and Recreation concessions and staff are not recommending any changes to current City policy other than what is recommended under the unsolicited quotation or proposal policy outlined in this report.

RECOMMENDATIONS

The Treasurer recommends that:

- (1) the new Unsolicited Quotations or Proposal Policy attached as Appendix 1 to this report be approved; and
- (2) the current Policy on Unsolicited Quotations and Proposals, Section 4.0 of the Procurement Processes Policy, be repealed.

Implementation Points

Upon approval, this policy will be communicated to all City Divisions and be posted on the City's public website.

Financial Impact

There are no financial impacts as a result of this report.

DECISION HISTORY

At the November 25, 2005 meeting, the Budget Advisory Committee requested that the Deputy Manager and Chief Financial Officer report to the appropriate Committee on strategies to evaluate proposals to City Build from the private/non-governmental organization sector that are not requested through a Request for Proposal or Quotation process, but may advance the City's interest; and further, that staff consult the City of Ottawa on their process.

On September 25, 26, 27 and 28, 2006, after considering an unsolicited proposal to extend a restaurant concession agreement, Council passed a motion requesting the Deputy City Manager and Chief Financial Officer and the City Solicitor to review and report on a policy with respect to the renewal of existing long term leases of a City property by a small business in the circumstances where the City intends to renew a lease for the property for the same or similar purpose, in order to encourage and support small business entities that are serving the City of Toronto, such report to include, but not limited to:

- the desirability of such a policy;
- the circumstances under which such a policy will apply; and
- how such a policy will impact existing purchasing policies.

ISSUE BACKGROUND

The City's procurement policies have undergone extensive review recently by both the Auditor General and by the Bellamy Inquiry. The focus of most of the recommendations from both of these reviews was to strengthen the City's commitment to open, fair, transparent and, most importantly, competitive bidding on the goods and services the City requires.

Unsolicited quotations or proposals are bids or proposals brought forward by vendors to the City outside of a normal competitive process (tenders, request for quotations and request for proposals). If considered, unsolicited quotations or proposals can be seen as pre-empting or circumventing the City's procurement processes. Therefore, it has been the City's policy and practice to discourage unsolicited quotations or proposals.

In early 2003, Council considered and, as recommended by staff, rejected the use of a "challenge" approach, whereby the contents of an unsolicited proposal is put out to market and the original vendor is allowed to match the best price received. At the time this report was considered, there was limited municipal experience with this approach.

Staff have reviewed a number of jurisdictions in Canada and the U.S. that have policies on unsolicited quotations or proposals and they appear to have been built largely on the same model. Staff also met with the City of Ottawa to determine their approach.

COMMENTS

Unsolicited Quotation or Proposal Policy

One of the prime arguments for having a public procurement process in place is to ensure, in a transparent way, that the City is receiving the best value. Staff will always recommend a competitive process unless there is a single provider or it is an emergency situation. The City's current policy on unsolicited quotations or proposals, adopted by Council in 2004, is that they will not be entertained and will be returned unless the Division Head is supportive and is willing to proceed. However, in those situations where a Division Head supports the proposal there is currently no guidance for them to evaluate the unsolicited quotation or proposals. Staff have reviewed a number of Canadian and US unsolicited policies and the consensus gleaned from the policies reviewed around two main themes is as follows:

1. *Unsolicited quotations or proposals should not be allowed to circumvent the City's procurement process*

Unsolicited quotations or proposals should never be considered for goods and services that are regularly purchased by the City. Staff recommend that unsolicited quotations or proposals should not be considered if:

- It resembles a current or upcoming competitive procurement that has or will be requested

- It requires substantial assistance from the City to complete the quotation or proposal
- The goods or services are readily available from other sources
- It is not deemed by the Division Head to be of sufficient value to the City of Toronto

A common situation is where the incumbent vendor makes an unsolicited quotation or proposal to extend their contract by offering more favourable terms they claim they would not make available to the City if they were asked to compete. These “limited time only” offers should not be considered where there is a good competitive market.

2. *The vendor should be expected to do their homework*

Often, unsolicited quotations or proposals are delivered in a format that can best be described as a rough outline or an idea with a loose dollar proposal attached. They would require a great deal of negotiation to translate the idea into an enforceable contract.

A proposal or quotation should not be considered unless the vendor has put real effort into it and it should be in a form that could quickly be translated into a legal contract. This is the City of Ottawa’s approach where staff were told by the Director: “if the proponent is told that they have to spend real time and money on developing the proposal before the City is even willing to consider it, 90% of the prospective proponents withdraw.”

The range of information required is outlined in the recommended policy attached in Appendix 1, but the general rule should be that the extent and quality of a proposal or quotation that is submitted on an unsolicited basis should be no less than what would be expected to be received in a proposal or quotation submitted under a formal RFP, RFQ or Tender Call. This information should include:

- Vendor profile
- Proposal or quotation overview
- Objectives and outcomes
- Project scope or specifications and time frames
- Deliverables and work plan
- Project controls and constraints
- Reporting and project management
- Vendor and City respective responsibilities
- Pricing and benefit/risk sharing
- Proposed contractual terms
- Acknowledgement that the vendor will abide by the City’s Policies and By-laws

In other words, the unsolicited quotation or proposal should be delivered with the same amount of detail as would be expected in a formal RFP, RFQ or Tender Call process.

Although not addressed specifically in the research, staff believe that a third principle should be included in the policy:

3. *The process should be transparent*

Should a an unsolicited quote or proposal get through the screening process described under the previous two headings, and the Division Head supports it proceeding, the proposal should still be subjected to a market test through a “challenge”.

Under a “challenge”, if a vendor approaches the City with an unsolicited proposal (that meets the criteria under the proposed policy), the City will not automatically accept or deal with the proposal. Instead the City advises the vendor that in order to consider their idea further the proponent must agree to allow the City to release a public Request for Proposal using the vendor’s concept as the basis and inviting others to bid to match or exceed the proponent’s ideas. The original vendor has a level of protection in that they have the opportunity to match or improve on any bids received from the public process. If the bid is matched, the award automatically goes to the original vendor. If not, the City is free to make the award to the other highest scoring proponent.

Prospective vendors would be advised of the challenge process at the time of first contact with the City so that if their proposal is at an early stage, they can determine if they want to invest the time and resources to develop it into a proposal the City could consider.

Approval Process

Although the City did not approve of the use of a formal “challenge” policy in 2003, under the revised policy, a Division Head could seek authority from Council to conduct such a process if an unsolicited proposal gets through the screening process. A challenge procurement has more risk to it than the more traditional RFP/ RFQ procurement approach, in that the specifications and terms in a challenge procurement are essentially being set by a vendor. Therefore, under the policy proposed, in seeking Council approval, the Division Head, in consultation with PMMD, would be required to provide the rationale for conducting the challenge and outline the rules and processes surrounding the challenge.

Of course, Committee could decide to waive the challenge process and accept the proposal. In this situation, the onus would be on the vendor to make the case to accept their quote or proposal without further competition. In this case, it would be strongly recommended that the vendor’s quote or proposal be made available publicly (save and except propriety information) prior to Council making its final decision so that transparency is maintained.

Additional Concern

Staff are of the view that if the recommendations made above are accepted by Council, only serious unsolicited quotations or proposals will be received and that they will be relatively few in number. In reviewing this proposed policy with selected City Divisions, a concern was raised that the continued restrictive nature of the policy may unduly restrict the number of creative opportunities that may be pitched to the City by the vendor community.

In response, this policy does not restrict the vendor community from pitching non propriety opportunities that the City could use in developing an open, transparent, competitive process. It also does not preclude a Division from meeting with a vendor and determining that an opportunity or idea needs more work. What the policy does is provide more certainty to the vendor that is considering submitting an unsolicited proposal to the City as to what is expected of them and how the City will respond.

Renewal of Long-Term Leases to Small Businesses

City Council recently accepted an unsolicited proposal received from the Tuggs Inc (Eastern Beaches Food Service Facilities) to extend a 20 year restaurant concession. The acceptance of the proposal was not supported by staff. In addition to accepting the proposal, Council directed staff to report back on a policy with respect to the renewal of existing long term leases of a City property by a small business in the circumstances where the City intends to renew a lease for the property for the same or similar purpose, in order to encourage and support small business entities that are serving the City of Toronto, such report to include, but not limited to:

- the desirability of such a policy;
- the circumstances under which such a policy will apply; and
- how such a policy will impact existing purchasing policies.

When debating the merits of extending the restaurant concession to Tuggs, one Councillor made the comparison of extending the concession to the common practice of extending a lease to a good tenant. The City, like most commercial landlords, does not tender its leases. However, the concession opportunities offered by Parks, Forestry and Recreation (PFR) are different from the more common commercial properties leased by Facilities and Real Estate (although FRE does tender some concessions such as the recent City Cafes and Cafeterias RFP).

The location of the concession facilities within the City's parks and recreational facilities are unique and are not readily subject to market comparisons or appraisals as common commercial leases are. PFR staff are of the view that the best way to determine best value for the City is to continue to lease these facilities through the RFP process.

Through the RFP process, the nature and extent of the services to be provided can be determined in the scope and specifications in the RFP. While the City cannot prohibit specific companies and individuals from bidding, if Council is particularly concerned about over commercializing a City property or park, restrictions on advertising and menu items may discourage bids from large restaurant chains that rely on them.

In order to recognize and provide opportunities to good vendors, the PFR Division currently builds in extension periods into the specifications of their RFPs so that excellent operators can be rewarded with contract extensions. However, it is best procurement practice to outline in the original call the maximum number and length of the extension periods that are available in the original call so that they are known by all parties in advance. This would not require a change to the City's existing procurement policy.

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SIGNATURE

Cam Weldon
Treasurer

ATTACHMENTS

Appendix 1 – Unsolicited Quotations or Proposal Policy