

Purchasing By-law Review

Date:	June 5, 2009
To:	Government Management Committee
From:	Acting Treasurer
Wards:	All
Reference Number:	P:/2009/Internal Services/pmmd/gm09015pmmd (AFS 9001)

SUMMARY

The City's Purchasing By-law, as adopted by City Council in 2004, includes a provision to undertake a comprehensive review of the By-law and related policies every five (5) years.

This report summarizes the results of the five year review process and recommends changes to Chapter 195 "Purchasing" of the Toronto Municipal Code (the "Purchasing By-law"), and a procurement related change to the Chapter 71 "Financial Control" of the Code (the "Financial Control" By-law).

RECOMMENDATIONS

The Acting Treasurer recommends that:

1. Chapter 195, Purchasing, of the Toronto Municipal Code be amended in accordance with the proposed amendments outlined in Attachment 1 of this report; and,
2. Chapter 71, Financial Control, of the Toronto Municipal Code be amended to provide, during the summer months when Standing Committees and Council do not have any regularly scheduled meetings, an extended authority to the Chief Financial Officer to approve any reallocation of budget between capital projects in an amount of not more than \$1 million.

Financial Impact

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

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting held on July 20, 21 and 22, 2004, City Council adopted a revised purchasing by-law (Chapter 195, Purchasing, of the Toronto Municipal Code) designed to meet divisional operational needs while ensuring effective controls and accountability mechanisms (re: Administration Committee Report No. 5, Clause 7 titled “Procurement Process Review Implementation – Consolidated Report”. Following is the link to the Consolidated Clause:

<http://www.toronto.ca/legdocs/2004/agendas/council/cc040720/adm5rpt/cl007.pdf>

In 2005, the Purchasing By-law was amended to reflect the reorganization of the City’s administrative structure as approved by City Council at its meeting held on November 30, December 1 and 2, 2004. Following are the links to the: i) November 30, December 1 and 2, 2004 Council Minutes (pages 13 to 30 of the Minutes document Council’s decision item 14.22 “Review of the City’s Administrative Structure”); and, ii) Policy and Finance Committee Report No. 4, Clause 40 titled “Authority to Update City By-laws to Reflect Administrative Re-organization, Statutory Changes and to Make Other Technical Changes” as adopted by Council on April 12, 13 and 14, 2005.

<http://www.toronto.ca/legdocs/2004/minutes/council/cc041130.pdf>

<http://www.toronto.ca/legdocs/2005/agendas/council/cc050412/pof4rpt/cl040.pdf>

In 2007, the Purchasing By-law was amended to i) reflect the new governance structure adopted by City Council at its meeting held on June 27, 28 and 29, 2006; and, ii) accommodate the addition of three new accountability officers of Council (Integrity Commissioner, Ombudsman and Lobbyist Registrar). Following are the links to: i) Policy and Finance Committee Report No. 5, Clause 1 titled “Implementation of a New Council Governance Model for the Next Term of Council” as adopted by City Council in June 2006; and, ii) Government Management Committee Report No. 10, Clause GM10.5 titled “Updates to the Financial Control, Purchasing and Signing Authority Bylaws” adopted by City Council at its meeting held on December 11, 12 and 13, 2007.

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060627/pof5rpt/cl001.pdf>

<http://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-12-11-cc15-dd.pdf>

At its meeting held on April 23 and 24, 2007, City Council amended the Purchasing By-law in relation to the authority of the Bid Committee by increasing the monetary limit from \$5 million to \$20 million (re: Government Management Committee Report No. 3, Clause 3.12 titled “Criteria for Procurement Awards made by the Standing Committee”).

<http://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-04-23-cc07-dd.pdf>

ISSUE BACKGROUND

The Purchasing By-law, in combination with the Financial Control By-law, provides the overall framework for proper and effective procurement processes in the City that meet divisional operational needs cost-effectively and efficiently, while ensuring effective financial controls and accountability.

The Financial Control By-law establishes the authorities and controls with respect to the allocation, commitment and spending of funds. The Purchasing By-law outlines the authority for the procurement of goods and services. Specifically, the Purchasing By-law and related Purchasing policies and procedures outline, among other things:

- the authority and duties of the Chief Purchasing Official and other City officials;
- the authority of Bid Committee, Standing Committees and Council;
- the process for calling of bids and awarding of contracts;
- the conditions under which goods and services can be sourced without a competitive process;
- bid disqualification and dispute resolution.

Section 195-5 (M) of the Purchasing By-law requires the Chief Purchasing Official to undertake a comprehensive review of the Purchasing By-law and all policies affecting the procurement process every five years.

Major changes were made to the Purchasing By-law in 2004 in response to the Auditor General's report. Changes were made again in 2005 and 2007 to further enhance the By-law.

COMMENTS

In 2008, a review team facilitated by the Acting Director, Purchasing & Materials Management Division and comprised of staff from Legal Services; Information & Technology; Internal Audit; Facilities & Real Estate; Transportation Services; Technical Services; Toronto Water; Accounting Services; Social Development; Finance & Administration; Corporate Finance; Financial Planning; Parks, Forestry & Recreation; Policy, Planning, Finance & Administration; Toronto Public Library; Toronto Transit Commission; Exhibition Place; and, Toronto Police Services was established to review and discuss revisions to the Purchasing By-law to address operational improvements.

The review of the Purchasing By-law was comprehensive and several meetings were held to examine and discuss all the clauses/sections of the by-law and related policies. Overall, the general consensus is that the by-law facilitates efficient procurement processes and effectively meets the operating requirements of the City's operating Divisions while ensuring appropriate controls and accountability measures. All of the changes being recommended to the Purchasing By-law, which are summarized in Attachment 1 of this report, are technical or administrative in nature. No substantive changes are being recommended in relation to the by-law or procurement policies.

To ensure that capital related procurement activities can continue uninterrupted during the extended Council summer recess, a change is also being recommended to the Financial Control By-law. Currently, section 71-9 (E) “Reallocations” of the By-law authorizes the Chief Financial Officer to approve any reallocation of budget between capital projects in an amount of not more than \$250,000. Any reallocation of budget between capital projects of more than \$250,000 requires the approval of both the Chief Financial Officer and Council.

With the extended summer recess, capital projects requiring a reallocation of budget in order to award a contract could be delayed for up to three months. In order to ensure that the City’s approved capital activities can continue to move forward while Standing Committees and Council are in recess, it is recommended that during the summer months when Standing Committees and Council do not have any regularly scheduled meetings, the Chief Financial Officer be authorized to approve any reallocation of budget between capital projects in an amount of not more than \$1 million.

A comprehensive review of the Financial Control By-law is scheduled for 2010 at which time staff will report to Committee and Council on any further recommended updates to the By-law.

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SIGNATURE

Giuliana Carbone
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ATTACHMENTS

Attachment 1: Recommended Revisions to Chapter 195 “Purchasing” of Toronto
Municipal Code (TMC)

Recommended Revisions to Chapter 195 “Purchasing” of Toronto Municipal Code (TMC)

Current Clause (Sections Being Recommended for Revision are Bolded)	Recommended Clause (Changes are Bolded)	Comments
Section 195-1 Division Purchase Limit		
The maximum dollar amount that any division head may expend in any one instance to procure goods and services directly rather than through the offices of the City Manager , such amount not to exceed \$7,500 or such increased amount as approved by the City Manager under 195-10D.	The maximum dollar amount that any division 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 \$50,000 or such increased amount as approved by the City Manager under 195-10D.	<p>The change from <i>City Manager</i> to <i>Chief Purchasing Official</i> is an administrative revision.</p> <p>The change from \$7,500 to \$50,000 is a technical change. It corresponds to the increase in DPO limit which was implemented in 2007.</p>
Section 195-5 D 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: D. Determining the method and scope, including without limitation, by public advertising, mailing invitations, posting notices , telephone or facsimile messages or any combination or all of these.	The Chief Purchasing Official shall have, subject to Council policies and directives, the authority and be responsible for: D. Determining the method and scope, including without limitation, by public advertising, mailing invitations, posting notices, electronic communications , telephone or facsimile messages or any combination or all of these.	In 2008, the City introduced the Call Document Downloading System. The addition of <i>electronic communications</i> was added as a technical revision to identify the new method of advertising.
Section 195-7 A Chief Purchasing Official and Opening of Responses		
A. 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.	A. Responses received by the Chief Purchasing Official in the location specified in the call by 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.	Replacing the word “ <i>before</i> ” with “ <i>by</i> ” clarifies that responses can be submitted up to the time stipulated but not after that time.
Section 195-7 B Chief Purchasing Official and Opening of Responses		
B. The prices contained in bids only, where appropriate in the discretion of the Chief Purchasing Official, shall also be read out.	B. The total prices contained in bids only, where appropriate in the discretion of the Chief Purchasing Official, shall also be read out.	The addition of word “ <i>total</i> ” before “price” makes it clear that it is the total price of the bid that is being referred and not pricing for individual components within the bid response.

Recommended Revisions to Chapter 195 “Purchasing” of Toronto Municipal Code (TMC)

Current Clause (Sections Being Recommended for Revision are Bolded)	Recommended Clause (Changes are Bolded)	Comments
Section 195-8 A Cancellation of calls		
The Chief Purchasing Officer shall be authorized to cancel any call where: A. There is a request by the division 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;	The Chief Purchasing Officer shall be authorized to cancel any call where: A. There is a request by the division head who initiated the call and responses are greater in-value than the funding approval for the commitment that would result from an award in respect of the call;	Inserting the words “ <i>in value</i> ” after “greater” clarifies that “greater” is in respect of monetary value.
Section 195-9 C Authority of Chief Purchasing Official to award and enter into commitments		
C. Where the dollar amount of any commitment entered into under Subsection B 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 City Manager or division head shall report jointly to Council through the Government Management Committee at the earliest opportunity after entering into the commitment.	C. Where the dollar amount of any commitment entered into under Subsection B 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 City Manager or division head shall report jointly to Council through the Government Management Committee not later than the second regular meeting of Council after entering into the commitment.	Changing the wording from “at the earliest opportunity” to “not later than the second regular meeting of Council” clarifies that commitments made under this section are reported to Council in a timely manner.
Section 195-11 E Bid Committee		
E. A quorum of the Bid Committee shall be two voting members.	E. The City Manager or his or her designate and Deputy City Manager – Chief Financial Officer or his or her designate must be present for quorum.	The Bid Committee is comprised of: the City Manager or his or her designate, the Deputy City Manager-Chief Financial Officer or his or her designate, any division head who initiated the call that is before the Bid Committee at any given meeting, and the City Clerk or his or her designate. However the City Clerk does not have a vote but acts as Chair. The division head is only entitled to vote in respect of his or her call. As such, this proposed revision ensures that quorum at the Committee is maintained.

Recommended Revisions to Chapter 195 “Purchasing” of Toronto Municipal Code (TMC)

Current Clause (Sections Being Recommended for Revision are Bolded)	Recommended Clause (Changes are Bolded)	Comments
Section 195-16 A (2) Extended authority of Bid Committee		
<p>The Bid Committee is authorized to exercise the power of a standing committee to make an award in the following circumstances:</p> <p>(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;</p>	<p>The Bid Committee is authorized to exercise the power of a standing committee to make an award in the following circumstances:</p> <p>(2) During the period between the last scheduled meeting of Council and the first meeting of a new Council after an election, or during the period between when Council breaks for the summer recess and the first agenda closing deadline for the appropriate standing committee following the break;</p>	<p>The revision of the wording is to define the specific period of time referred to as the “summer recess”.</p>
Section 195-17 B Sale or disposal of surplus materials or equipment.		
<p>B. Funds received for the disposal of surplus materials and equipment will be credited back to the division having control over the surplus materials or equipment disposed.</p>	<p>B. Funds received for the disposal of surplus materials and equipment will be credited back to the last division having control over the surplus materials or equipment disposed.</p>	<p>Adding the word “<i>last</i>” clarifies which division receives the funds from auction proceeds in cases where the surplus material was in the control of more than one division.</p>