

Review of Open Contracting Global Principles

Date: October 5, 2021

To: General Government and Licensing Committee

From: Chief Procurement Officer, Purchasing and Materials Management Division

Wards: All

SUMMARY

This report responds to a request from City Council for the City Manager to report to City Council with a review of the possibility of Toronto adopting the Open Contracting Global Principles or any other similar principles.

Purchasing and Materials Management Division (PMMD) staff reviewed open contracting principles set out by different organizations such as the Open Contracting Partnership (OPC) and Open North against the City's current procurement process, which is governed by Municipal Code Chapter 195, Purchasing. Staff have determined that the City's procurement policies and procedures are generally in alignment with open contracting principles. For example:

- Suppliers interested in marketing their products or services outside of an active procurement process must register with the Toronto Lobbyist Registrar;
- Suppliers who are involved in developing the technical specifications and other evaluation criteria for a particular solicitation are prohibited from bidding on it;
- All suppliers have equal access and opportunity to submit compliant bids for competitive solicitations;
- Evaluations are conducted in a structured manner based on criteria outlined in the solicitation; and
- Post-award, unsuccessful suppliers have the opportunity to request a debriefing to obtain feedback on why their submission was not selected.

Through regular continuous improvement, PMMD staff will continue to monitor and identify opportunities to ensure the City's procurement process remains open, fair and transparent and to effectively generate the best value for money.

RECOMMENDATIONS

The Chief Procurement Officer, Purchasing and Materials Management Division recommends that:

1. City Council receive this report for information.

FINANCIAL IMPACT

There are no financial impacts associated with the adoption of this report.

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

DECISION HISTORY

On May 5 and 6, 2021, City Council adopted [EX23.2, Innovative Partnership to Accelerate Digital Services with Payments](#). The report included a request for the City Manager to report to City Council on a review of the possibility of Toronto adopting the Open Contracting Global Principles or any other similar principles.

COMMENTS

Open Contracting Principles

Open contracting principles relate to disclosure and participation in public procurement. The goal of open contracting is to facilitate competitive and fair procurement processes, improved contract performance and improved development outcomes. There are multiple organizations that have published principles relating to open contracting. Two such organizations are the Open Contracting Partnership (OPC) and Open North.

In general, the principles set out by these groups are:

- The right of the public to access information related to the procurement process, through transparent processes, routine publication of information through platforms such as Open Data, and public access to recourse in instances where this information is in dispute.
- The right of the public to participate in procurement processes, through public consultation, capacity building to enable more meaningful participation, and incorporation of public feedback into procurements.

The City's Procurement Process

Purchasing and Materials Management Division (PMMD) staff reviewed key global best practices for open contracting set out by different organizations against the current procurement process, from planning to award. Staff have determined that the City's procurement process, governed by Municipal Code Chapter 195, Purchasing, is fair, open and transparent, and generally in alignment with open contracting principles.

Looking specifically at the [Open Smart Cities, Open and ethical procurement guide](#), from Open North, there are two key open contracting best practices: fairness towards suppliers and maximize compliant responses. Under these overarching themes, Open North sets out additional recommended practices and prohibited or unethical practices, as well as contractual provisions and transparency practices. A summary of these practices and how the City applies them is set out below, with reference to Municipal Code Chapter 195 and the Procurement Processes Policy.

Fairness towards Suppliers

This practice focuses on creating opportunities for suppliers to submit compliant bids and ensuring the neutral assessment of bids.

Table 1: Fairness towards Suppliers - Open Contracting Recommended Practices and their Application in the City

Open Contracting Recommended Practices	The City's Procurement Process
All suppliers should have the opportunity to submit compliant bids (i.e. no targeting or discrimination).	<p>The City does not discriminate or exercise preferential treatment in the awarding a contract to a supplier as a result of a competitive solicitation, unless it can be justified on the basis of a legitimate business objective, public policy, or applicable law (195-4.1(F); Procurement Processes Policy, s.14).</p> <p>There is an opportunity to more clearly define in the Procurement Processes Policy what constitutes a legitimate business objective for the purpose of applying this exception.</p>
Involving suppliers in the drafting of public tenders is an unethical practice.	Suppliers must fully disclose any conflict of interest or unfair advantage related to a solicitation, including prior involvement in developing the technical specifications or other evaluation criteria for the solicitation and prior access to confidential City information that is materially related to the solicitation and that was not readily accessible to other prospective suppliers (195-13.3(C)). Suppliers may be disqualified from participating in a procurement process if the conflict of interest or unfair advantage cannot be resolved (195-13.12).

Open Contracting Recommended Practices	The City's Procurement Process
The evaluation of proposals should always be detailed in a solicitation and leave as little room as possible for subjectivity.	All solicitations issued by PMMD clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids or proposals and, where appropriate, the methods of weighting and evaluating the criteria (195-2.1 Evaluation Criteria; Procurement Processes Policy, s.11).
A dispute resolution process should be provided.	Pre- and post-award bid dispute processes are available (195-10).

Maximize Compliant Responses

This practice focuses on centralized governance of IT acquisitions, collective data ownership and neutral project scoping.

Table 2: Maximize Compliant Responses - Open Contracting Recommended Practices and their Application in the City

Open Contracting Recommended Practices	The City's Procurement Process
Never ask a supplier to demonstrate its products or accept a demonstration. This type of exchange must be framed by a tendering process as it may place the City in a conflict of interest situation.	Suppliers interested in marketing their products or services outside of an active procurement process must register with the Toronto Lobbyist Registrar (195-13.9).
Where cities are uncertain about the level of market response, conduct neutral market watches to determine supplier response capacity instead of Requests for Information (RFI).	PMMD's Category Management and Strategic Sourcing team uses market soundings to determine supplier response capacity. RFIs are an available tool, used in limited situations where staff determine they will generate positive outcomes (195-6.1). There is an opportunity to more guidance in the Procurement Processes Policy on the situations in which RFIs may be used.

Open Contracting Recommended Practices	The City's Procurement Process
Calls for tenders should be published for free.	A notice of intended procurement for procurements valued over \$100,000 and for requests for supplier pre-qualification for selective solicitations is published on the City's electronic tendering system (SAP-Ariba), which suppliers can register on for free (195-6.4; Procurement Processes Policy, s.8).
Contracts should be published following award.	For procurements over \$100,000, PMMD posts notice of an award online (Procurement Processes Policy, s.16).

Next Steps

There are a number of opportunities to enhance the openness of the City's procurement process. PMMD staff will investigate further and, where possible, implement policy and process enhancements to ensure the City's procurement process remains open, fair and transparent and to effectively generate the best value for money, including:

- The use of Open Data could be expanded to report on additional aspects of the procurement process. Open North transparency practices include publishing contracts, execution performance of awarded contracts, unit prices of goods, risk analyses and the expense evolution related to each contract. Further investigation is required to assess the risks associated with publishing this information.
- All of the information in the tables above is published on the City's website; however, a summary of information on open procurement is not currently available.
- Municipal Code Chapter 195 is scheduled for regular review, during which some sections may be strengthened, as identified above, as well as the associated Procurement Processes Policy. PMMD is targeting a Q3 2022 report to City Council on the results of this review.
- PMMD staff are working with Technology Services Division to review opportunities to expand the use of open contracting practices through the Digital Infrastructure Plan, including transparency and data governance practices.

CONTACT

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SIGNATURE

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