

Clause embodied in Report No. 2 of the Administration Committee, as adopted by the Council of the City of Toronto at its meeting held on March 6, 7 and 8, 2001.

**3**

**Lobbying Disclosure Policy for  
Certain Requests for Proposals  
and Tender/Quotation Calls**

*(City Council at its meeting held on March 6, 7 and 8, 2001, amended this Clause by adding thereto the following:*

*“It is further recommended that the Chief Financial Officer and Treasurer be requested to submit a report to the Administration Committee respecting a Lobbying Disclosure Policy that affects all lobbyists dealing with the City, particularly with respect to lobbyists representing development applications.”)*

**The Administration Committee recommends the adoption of the report (January 22, 2001) from the Chief Financial Officer and Treasurer subject to the following amendments to Section 4.0 entitled “Process to Apply Criteria:”, embodied in Appendix A, entitled “Lobbying Disclosure Policy: Certain Requests for Proposals and Tender/Quotation Calls”:**

**(1) amending Section 4.1 to read as follows:**

**“4.1 the Department Head, before applying a lobbying disclosure requirement under this policy for a contract expected by the Department Head to have a value over \$2 million, shall consult with the Purchasing Agent”; and**

**(2) adding thereto the following new Section 4.1-1:**

**“4.1-1 the Department Head, in recommending a lobbying disclosure requirement for contracts expected by the Department Head to have a value under \$2 million, shall consult with the Purchasing Agent and obtain approval of Council through the Administration Committee;”.**

**The Administration Committee submits the following report (January 22, 2001) from the Chief Financial Officer and Treasurer:**

Purpose:

This report recommends a policy to capture and document the incidence of lobbying on certain Requests for Proposals, and Tender and Quotation Calls. Criteria to determine the contracts effected have been developed and include Requests and Calls with a high-value, a long-term, or a high profile with the likelihood of intense lobbying. Adoption of the policy by Agencies, Boards and Commissions and other City-affiliated bodies, is also recommended.

Financial Implications and Impact Statement:

Not Applicable.

Recommendations:

It is recommended that:

- (1) the “Lobbying Disclosure Policy for Certain Requests for Proposals and Tender/Quotation Calls” as contained in Appendix A of this report, be adopted;
- (2) the Chief Financial Officer and Treasurer ensure Departments are aware of the need to comply with the policy;
- (3) City Agencies, Boards and Commissions, Council established Task Forces and other City-affiliated organizations, be requested to adopt and apply the policy, with disclosure criteria modified if necessary, in consultation with the Purchasing and Materials Management Division and the City Solicitor; and
- (4) the appropriate City officials be authorized and directed to take the necessary action to give effect hereto.

Background:

At its meeting of June 13, 2000, the Administration Committee requested the Finance Department, Purchasing and Materials Management Division (PMMD), to report on a process and criteria to manage lobbying on competitive Quotation and Tender Calls (“Calls”), and Requests for Proposal. In addition, the Committee requested staff to report back in September on how the employees and officials of the City’s Agencies, Boards and Commissions, Task Forces and Special Purpose Bodies could best apply the lobbying disclosure process.

In adopting the report, Clause No. 3 of Report No. 14 of The Administration Committee titled “Purchasing Policies and By-law” at its meeting of July 4, 5 and 6, 2000, Council amended the clause. Specifically, the Chief Financial Officer and Treasurer was requested to include in her forthcoming report regarding purchasing procedures, the applicability of the disclosure provisions to competitive Calls and Requests estimated to be at or below the Bid Committee’s award limit.

#### Comments:

Several reports to Council (“Interim Report on a Registry of Lobbyists and Related Matters” in June 1998, “Code of Conduct for Members of Council” in September 1999, and, “Purchasing Policies and By-law” in July 2000), have explained that Ontario municipalities lack the legal authority to enact and enforce an effective lobbyist registration policy. The matter of managing lobbying activity in order to make City decision-making more transparent to the public, was addressed to some extent in the Code of Conduct for Council Members policy. A framework was included to assist individuals in taking responsibility for the nature of their interactions in this regard.

In contrast to establishing a lobbyist registry, the City does possess the authority to capture the incidence of lobbying on competitive calls (such as Tender Calls or Requests for Proposals) issued by its Purchasing and Materials Management Division (PMMD). This can be achieved through the Call or Request document itself by including a requirement that respondents, or their representatives, shall report any lobbying of Council members, officials and staff. In this manner, and consistent with municipal authority, there is no attempt by the City to regulate the activities of lobbyists themselves.

Accordingly, PMMD in consultation with Legal, Clerk’s and the Office of the CAO, developed the Lobbying Disclosure Policy for Certain Requests for Proposals, and Tender/Quotation Calls, attached as Appendix A to this report.

#### Overview of Policy in Other Sectors:

To aid in the development of lobby disclosure criteria, the Province of Ontario, Federal Government of Canada and seventeen municipalities in North America were consulted as to how they apply standards of conduct in regard to competitive Calls. While two U.S. municipalities and the Province of Ontario and Federal Government of Canada use a lobby registry system, it has been seen this is not presently within the authority of Toronto to implement. Another municipality specifically prohibited lobbying on its competitive calls, while the fourteen other municipalities reviewed had no policy or practices in place in this regard.

#### Applicability of the City Policy – Value and Types of Competitive Calls:

In determining what value of contracts should be included in the Policy, the award limit delegated by Council to the Bid Committee appeared to be an acceptable benchmark. Council has determined that contracts up to \$2 million are within the purview of the Bid Committee to award. Contracts of greater value are awarded by Standing Committees (\$2 million to \$5 million) or Council (over \$5 million). Accordingly, for the purpose of the Lobbying Disclosure Policy, Requests exceeding \$2 million are considered to be ‘high-value’ and subject to the Policy.

In determining the type of contracts appropriate for inclusion in the Lobbying Disclosure Policy, it was recognized that lobbying activities are almost exclusively associated with Requests for Proposals. This is because the nature of lobbying is intended to influence the outcome of an evaluation and, hence, the award of the contract. Requests for Proposal, unlike Calls, involve an evaluation process comprised of factors additional to pricing. Responses to the same Request commonly involve differing ideas, solutions, methods and pricing to be evaluated. For these reasons, Requests for Proposals are rarely before the Bid Committee since pricing will vary according to the specifics of each Proposal received and means little outside that context.

In contrast, the primary criterion for award of a contract arising from a Call is pricing. In typical City Calls, there is a legal obligation to award to the low bidder as long as all Call specifications and requirements are met. As a result, lobbying activity is far less likely to occur for Calls since price will be the straightforward factor determining award. Lobbying on Calls may occur in those exceptional situations where a staff recommendation is made to award to other than the apparent low Bidder (because of non-compliance to the Call or informality in the Call submission). That situation requires Council to approve the award since, in such cases, the jurisdiction delegated under the Purchasing By-law to the Bid Committee, or Standing Committees, is removed. If the issue is a serious one, there may be a written objection to the award, followed by lobbying.

Therefore, while few Calls will be effected, it is being recommended that all Requests and Calls meeting the following criteria be subject to the Lobbying Disclosure Policy:

- (i) Requests for Proposals and Calls meeting the criteria of high-value, or long-term contracts, or those with a high profile and likelihood of intense lobbying.

This means that all Requests and Calls above \$2 million are subject to the Lobbying Disclosure Policy. Lower value Requests and Calls with a high profile, or a long contract term, for example, will also be subject to the Lobbying Disclosure Policy.

#### Summary of the Recommended Lobbying Disclosure Policy:

The purpose of the Lobbying Disclosure Policy is to enhance the public's access to and understanding of the decision-making process associated with awards of contract. The information to be submitted will indicate the nature of lobbying activity associated with a particular Request or Call, and the persons and organizations contacted. All information will be available to the public, Proponents or Bidders, Council Members and staff.

The Lobbying Disclosure Policy, contained in Appendix A, includes definitions for the terms lobbying, high-value contracts and long-term contracts, as well as for high profile contracts characterized by intense lobbying. A process for Departments and PMMD to jointly manage the application of the Policy is also included.

Highlights of the Policy are summarized as follows:

- (a) lobbying disclosure will apply to all Requests and Calls of high-value (over \$2 million), or a long-term, and/or of high profile (irrespective of value) likely to experience intense lobbying;
- (b) lobbying disclosure will be applicable to departments, and will be encouraged for adoption and application by agencies, boards, commissions, and other City-affiliated organizations;
- (c) the Department Head responsible for a contract shall identify whether a contract is high profile (i.e., has policy significance beyond monetary value);
- (d) disclosures are to be submitted on an approved form filed with the City Clerk up to the time of the meeting where the award will be made, and non-disclosure shall be assumed to mean that no lobbying has been conducted by the proponent/bidder, or their representatives/employees;
- (e) disclosure information for relevant Requests/Calls will include the following:
  - (i) the name, address and telephone number of the Proponent/Bidder;
  - (ii) the name, address and telephone number of each person retained, employed or designated by such Proponent/Bidder who has lobbied;
  - (iii) the Request or Call document number in respect of which each person retained, employed or designated by such Proponent/Bidder has lobbied;
  - (iv) a description of the nature of the lobbying communications made by each person retained, employed or designated by such Proponent/Bidder; and
  - (v) the name of the person and department lobbied by such Proponent/Bidder;
- (f) forms must be up to-date to the time of the meeting where the contract award will be made and any non-disclosure subsequently discovered may result in a Proponent or Bidder (including unsuccessful Proponents/Bidders) being disqualified from future contract awards for one year if so determined by Council pursuant to a PMMD report (see Section 6.1 of Appendix 'A');
- (g) the City Clerk will provide the disclosure information upon request to any members of Council, City staff or the public and shall post disclosure information on the City's web-site; and
- (h) despite the Lobbying Disclosure policy, Council maintains the right to invoke a "prohibition" requirement for any Call or Request, i.e., a "no-lobbying" provision to the effect that a respondent can only make representations and present their arguments in a public deputation to Committee or Council, the media, and to any contact party identified in the Call or Request document.

### Applying Lobbying Disclosure Standards to City-Affiliated Organizations:

Council has directed that staff report on how the Lobbying Disclosure Policy for departments can best be applied to City Agencies, Boards and Commissions, Task Forces and other City-affiliated bodies. These organizations possess a variety of different legal, operational, employment and other relationships to the Council and, thus, their accountability to the City varies. Council may have only a limited authority to direct that its policies and procedures be applied to them. In many cases, this could not occur without modifications (legal and operating) appropriate to the purpose of the Agency, Board or Commission.

Whenever a City-affiliated organization or body uses the services of PMMD on its behalf to issue a Request for Proposal or Call, PMMD will encourage the application of the Lobbying Disclosure Policy and criteria (i.e., high-value, or long-term, or high profile and likely to result in intense lobbying). To support the role of PMMD in this regard, it is recommended that City Agencies, Boards and Commissions, Council established Task Forces and other City-affiliated organizations, be requested to adopt and apply the policy, with disclosure criteria modified if necessary, in consultation with the Purchasing and Materials Management Division and the City Solicitor.

### Conclusion:

Staff were directed to report on a process and criteria to manage the disclosure of lobbying on Calls (quotations and tenders) and Requests for Proposals. Staff were also directed to assess the applicability of the process to the City's Agencies, Boards and Commissions, Task Forces and other City-affiliated organizations, as well as to competitive Calls and Requests at or below the Bid Committee's award limit.

This report recommends adoption of a Lobbying Disclosure Policy to make decision-making more transparent to the public. It recognizes that the Policy will most often apply to Requests for Proposals since, unlike tender or quotation Calls, they contain an evaluation process and low price is not the primary criteria for award. It is the nature of Lobbying in these cases, to attempt to influence the outcome of the evaluation process. The types of Requests for Proposals included in the Policy, are those that meet certain criteria (i.e., high-value, or long-term, or high profile and likely to be the subject of intense lobbying irrespective of value). The same criteria will be applied to identify the Calls to be subject to the Lobbying Disclosure Policy. It is anticipated that only a few, exceptional Calls, characterized by a written objection to award and requiring award by Council, may experience lobbying activities.

Disclosures are to be submitted on an approved form filed with the City Clerk up to the time of the meeting where the award of the Request or Call will be made. The penalty being recommended for any non-disclosure later discovered (including by unsuccessful Proponents/Bidders) is possible disqualification from future contract awards for one year as determined by Council pursuant to a report from the PMMD.

The Lobbying Disclosure Policy is recommended to apply to departments while City Agencies, Boards and Commissions, Council established Task Forces and other City-affiliated organizations, are to be encouraged to adopt and apply the Policy. If these bodies require the disclosure criteria to be modified, for operational or legal reasons, it is recommended that this be done in consultation with PMMD and the City Solicitor.

Despite the Lobbying Disclosure Policy, Council will maintain the right to invoke a “prohibition” requirement for any Call or Request. This is a “no-lobbying” provision to the effect that a respondent can only make representations and present their arguments in a public deputation to Committee or Council, the media, and to any contact party identified in the Call or Request document.

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List of Attachments:

Appendix A: Lobbying Disclosure Policy for Certain Requests for Proposals and Tender/Quotation Calls.

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Appendix A

Lobbying Disclosure Policy: Certain Requests for Proposals and Tender/Quotation Calls

1.0 Purpose:

To enhance transparency in competitive procurement awards through a lobbying disclosure process for certain competitive Requests for Proposals and Tender and Quotation Calls issued by the City of Toronto, Purchasing and Materials Management Division (PMMD) on behalf of City Departments.

## 2.0 Application:

Lobbying disclosure shall apply to all competitive Requests or Calls issued by PMMD that are for high-value contracts, or for long-term contracts, or high profile contracts with the likelihood of intense lobbying that could jeopardize objective decision-making, as defined in section 3.0 below.

Lobbying disclosure, with the lobbying disclosure criteria appropriately modified if necessary in consultation with PMMD and the City Solicitor, will be encouraged for adoption and application by City agencies, boards and commissions, Council established Task Forces and other City-affiliated organizations.

## 3.0 Definitions:

3.1 All references in *Italics* below refer to definitions contained within Chapter 195 (Purchasing) of the City of Toronto Municipal Code, as amended from time to time.

3.2 In this policy,

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

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

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

“High-value contract” means a contract estimated to have a value above the *Bid Committee* award limit as set out in Chapter 195 (Purchasing) of the City of Toronto Municipal Code;

“High profile contract” means a contract that, in the opinion of the *Department Head* responsible for the issuance of the Request or Call, has a policy significance beyond its monetary value and includes a contract in respect of which, in the opinion of the *Department Head*, the likelihood of intense lobbying may jeopardize objective decision-making;

“Lobbying” for the purposes of this policy, means oral or written communications by Bidders/Proponents and/or representatives employed or retained by them, with members of Council, City officials, and staff, in order to promote or oppose any Bidder or Proponent, as the case may be, responding to a PMMD Call or Request;

“Long-term contract” means a contract that exceeds three years;

“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;

“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; and

“Request” means a *Solicitation* from the City to external suppliers or providers to submit a Proposal.

4.0 Process to Apply Criteria:

4.1 The *Department Head*, before applying a lobbying disclosure requirement under this policy, shall, consult with the *Purchasing Agent*.

4.2 All Requests or Calls issued by PMMD on behalf of City Departments, for high-value contracts, high profile contracts, or long-term contracts, shall include a statement which advises Proponents or Bidders that they are required to ensure that no communication is made by the bidder/proponent or its representatives, including a third party representative employed or retained by it to promote or oppose any bid/proposal unless such communication, relating to all meetings, written correspondence and telephone discussions that the representative has had with any Member of Council, City employee, appointed member of any City boards, agency, commission, task force, or related organizations, is disclosed by the filing of a disclosure form in accordance with this policy and that any false or misleading disclosure or non-disclosure may affect the award of future contracts. Proponents or Bidders shall also be informed that failure to file a completed form (non-disclosure) shall be assumed to mean that no lobbying has been conducted by the Proponent or Bidder, its employees or representatives.

4.3 Disclosures of Lobbying are to be submitted on a form to be approved by the City Clerk from time to time. Forms must be up-to-date to the time of the meeting where the award will be made and filed with the City Clerk up to the time of the meeting where the award of the Request or applicable Call will be made.

4.4 Disclosures are to contain the following information:

- (i) the name, address and telephone number of the Proponent or Bidder;
- (ii) the name, address and telephone number of each person retained, employed or designated by such Proponent or Bidder who has engaged in Lobbying in relation to the Proposal or Bid;
- (iii) the Request or Call document number in respect of which each person retained, employed or designated by such Proponent or Bidder has engaged in Lobbying;
- (iv) a description of the general nature of communications that each person retained, employed or designated by such Proponent or Bidder has made in Lobbying; and

- (v) the name of the person and department before whom such Proponent or Bidder has engaged in Lobbying.

5.0 Availability of Disclosure Information:

- 5.1 The City Clerk will provide the disclosure information upon request to any members of Council, City staff or the public.

- 5.2 The City Clerk shall post disclosure information on the City's Website.

6.0 Insufficient Disclosure:

- 6.1 Where a Proponent or Bidder has not fully disclosed Lobbying in accordance with this policy, or made false or misleading statements in any disclosure form filed with the City Clerk, any Proposal or Bid received from the Proponent or Bidder, as the case may be, shall not be considered for award in any further Request or Call for a period of one year from the time of such non-disclosure or false disclosure coming to the attention of the *Purchasing Agent*, unless such Proposal or Bid is approved by Council pursuant to a report from the Purchasing Agent setting out the extent and nature of any non-disclosure or false or misleading disclosure.

- 6.2 Where a Proponent or Bidder is alleged not to have fully disclosed Lobbying or to have made false or misleading disclosure in respect of a Proposal or Bid, the *Purchasing Agent* shall investigate the allegation and make a determination whether in fact such has occurred.

7.0 Lobbying Prohibition:

- 7.1 Despite the contents of this policy, Council reserves the right to invoke a "prohibition" requirement in any competitive Call or Request, namely, a "no lobbying" provision to the effect that a Bidder or Proponent and representatives employed or retained by it, can only make representations and present their arguments advancing or opposing a PMMD issued Call/Request in a public deputation to Committee or Council under the provisions of the City's Procedural By-law, or to the media, and any contact party identified in the competitive Call or Request.