

Purchasing Policies and By-law

(City Council on February 29, March 1 and 2, 2000, amended this Clause:

- (1) *by referring Recommendation No. (1) embodied in the report dated February 3, 2000, from the Chief Financial Officer and Treasurer, to the Administration Committee, viz.:*

“(1) new Purchasing Policies for the Ban of Purchase of Products Manufactured in Factories where Children are used as Slave Labour, Canadian Content and Live Animal Testing, outlined in Appendix ‘A’ of this report be adopted;”;

- (2) *to provide that Recommendations Nos. (2) and (3) embodied in the report dated February 3, 2000, from the Chief Financial Officer and Treasurer, be adopted, and Appendix “B” to such report, as amended by the Policy and Finance Committee, be implemented as the City of Toronto’s Interim Purchasing By-law, with the understanding that the Administration Committee’s deliberations on Recommendation No. (1), above, may recommend amendments to the Interim Purchasing By-law, and subject to further amending Appendix “B” as follows:*

- (a) *by deleting from the definition of “Departmental Direct Purchase Limit”, in Section 1, “Definitions”, the reference to “subsection 5(2)”, and inserting in lieu thereof reference to “subsection 5(3)”, so that such definition shall now read as follows:*

“ ‘Departmental Direct Purchase Limit’ means the maximum dollar amount that any Department Head may expend to procure goods and services directly rather than through the offices of the Purchasing Agent, such amount not to exceed \$10,000.00 or such increased amount as approved by the Chief Administrative Officer in accordance with subsection 5(3);”;

- (b) *by amending clause 8(2)(b) to read as follows:*

“(b) the amount of the Award is equal to or less than the Approval by Council and is equal to or less than \$1 million;”;

- (c) *by amending Section 9, “Standing Committee and Council”, as follows:*

- (i) *by deleting clause (3)(a)(i) and inserting in lieu thereof the following:*

“(i) the conditions specified in subsection 8(2) or in subsection 8(3), as applicable, are met with the exception of the monetary limit set out in clause 8(2)(b);”;

(ii) *by deleting clause (3)(a)(ii) and inserting in lieu thereof the following:*

“(ii) the amount of the Award is equal to or less than the Approval by Council and is greater than \$1 million and less than or equal to \$5 million;”;

so that subsection 9(3) shall now read as follows:

“A Standing Committee to which a Bid or Proposal is referred under subsection 9(1) shall

(a) be authorized to make an Award if,

(i) the conditions specified in subsection 8(2) or in subsection 8(3), as applicable, are met with the exception of the monetary limit set out in clause 8(2)(b), and

(ii) the amount of the Award is equal to or less than the Approval by Council and is greater than \$1 million and less than or equal to \$5 million, or

(b) make a recommendation to Council.”;

(d) inserting the following new Section 14, and renumbering the existing Section 14 as Section 15:

“14. Environmental Procurement:

All Calls, Requests and Solicitations shall have regard to the City’s Environmental Procurement Policy.”; and

(3) by adding thereto the following:

“It is further recommended that:

(a) the following new Section 14 incorporated in the Interim Purchasing By-law be referred to the Chief Financial Officer and Treasurer, with a request that she submit a report to the Policy and Finance Committee on the cost and effects to the City of Toronto if such Section is included in the final Purchasing By-law:

“14. Environmental Procurement:

All Calls, Requests and Solicitations shall have regard to the City’s Environmental Procurement Policy.”; and

(b) the following proposed amendments to the Purchasing By-law embodied in the

communication dated March 1, 2000, from Councillor Adams, be referred to the Administration Committee for further consideration:

Moved by Councillor Adams:

‘That:

- (1) Section 3, “Ethics and Purchasing”, be amended by adding the following paragraph:*

“Once a Call, Request, or Solicitation has been issued, lobbyists shall be required to disclose communications relating to all meetings, written correspondence and telephone discussions that they have had with any Member of Council, City official, appointed member of any City board, agency, commission, task force, or related organization to promote or oppose any bid, tender or proposal. This disclosure must be made to the City Clerk, in a form satisfactory to the City Clerk, within five business days of the communication and must be made prior to the scheduled opening of the bid, tender or proposal. Disclosure documents must be made available to the public and posted in a timely fashion on the City’s website.”; and

- (2) the following new definition be added to Section 1, “Definitions”:*

“ ‘Lobbyist’ includes an individual who is paid to communicate with Members of Council, City officials and/or appointed members of City agencies, boards, commissions, task forces and other related organizations, to promote or oppose any Bidder or Proponent.” ’ “)

The Policy and Finance Committee recommends the adoption of the following report (February 3, 2000) from the Chief Financial Officer and Treasurer subject to amending the section pertaining to “Departmental Direct Purchase Limit” contained in Appendix “B” by deleting the amount of \$5,000.00 and inserting in lieu thereof the amount of \$10,000.00, so that the aforementioned section now reads as follows:

“Departmental Direct Purchase Limit” means the maximum dollar amount that any Department Head may expend to procure goods and services directly rather than through the offices of the Purchasing Agent, such amount not to exceed \$10,000.00 or such increased amount as approved by the Chief Administrative Officer in accordance with subsection 5.(2);”.

Purpose:

To develop uniform Purchasing Policies for the new City of Toronto, to report on Bid Committee activity and to replace the Interim Purchasing By-law with a new Purchasing By-law.

Financial Implications:

Not Applicable.

Recommendations:

It is recommended that:

- (1) new Purchasing Policies for the Ban of Purchase of Products Manufactured in Factories where Children are used as Slave Labour, Canadian Content and Live Animal Testing, outlined in Appendix "A" of this report be adopted;
- (2) a new Purchasing By-law, as outlined in Appendix "B", be adopted; and
- (3) authority be granted for the introduction of a Bill in Council in the form of the draft By-law, attached to establish procedures and authority for the Procurement of Goods and Services.

Council Reference/Background History:

At its meeting of March 4, 5 and 6, 1998, Council adopted a report from the Chief Financial Officer and Treasurer dated February 3, 1998 (Clause No. 1 of Report No. 2 of the Corporate Services Committee) as amended. Recommendation No. (3) of the report stated the following:

“the Chief Financial Officer and Treasurer report to Council, through the Corporate Services Committee, as soon as possible on uniform procurement policies”

Recommendation No. (2) of the Corporate Services Committee reads as follows:

“That the Chief Financial Officer and Treasurer be requested to include in her forthcoming report ethical issues, Canadian Content and any other provisions included in any purchasing policy of any of the former six Area Municipalities or Metro; and that the report not only indicate the seven processes used by the former municipalities and Metro, but what is deemed to be best practices;”

Council also amended the report recommending “that the Bid Committee be requested to submit a report to Council, by the end of 1998, on how the Bid Committee has been operating.”

As the new Purchasing By-law and the new Financial Control By-law complement each other, this report, along with a separate report on the Financial Control By-law, are both being forwarded to the Policy and Finance Committee for consideration.

Discussion:

The Purchasing Policies and the new Purchasing By-law have been circulated to all Departments for their review and comments. Legal and Audit have also reviewed the proposed Policies and By-law and their suggested changes have been incorporated. All departmental suggestions were considered and incorporated in the proposed Policies and By-law, where possible. The Senior Management Team has reviewed this report and concur with the recommendations.

(A) Purchasing Policies:

Purchasing policies of all former municipalities were reviewed. Recommended for adoption in this report are policies, which were considered to be best practices. The Policies being recommended are included in Appendix "A". Purchasing policies in place by former Municipalities were as per the following table:

Purchasing Policies Of Former Municipalities

	Policy	E.Y.	Etob.	Metro	N.Y.	Scar.	Tor.	York	New City Policy Recommended
1.	Ban on Purchase of Certain Fireworks						X		Yes
2.	Business with Companies who have moved out of Metropolitan Toronto (applies to Public Tenders over \$100,000 and Invitational Tenders from \$20,000 to \$100,000)				X				No
3.	Local Preference	X	X			X		X	No
4.	Canadian Content	X	X	X	X	X	X	X	Yes
5.	Code of Ethics	X	X			X	X		By-law
6.	Consultants/Professional Services	X	X	X		X			Yes
7.	Cooperative Purchasing		X			X	X	X	By-law
8.	Disposal of Surplus/Obsolete Goods	X	X	X	X	X	X		By-law
9.	Contracting without Tenders, Proposals or Quotations	X	X		X	X	X	X	By-law
10.	Live Animal Testing						X		Yes

The following is a summary of each Purchasing policy and recommendations for new Purchasing policies for the new City of Toronto:

(1) Ban of Purchase of Certain Fireworks:

In 1995, the former City of Toronto Council adopted a resolution regarding the ban of purchase of certain fireworks.

The former City of Toronto was the only former municipality to have such a policy. The rationale for this policy was to advise suppliers that the former City of Toronto did not wish to encourage the use of fireworks manufactured in countries where children are used as slave labour in factories.

Since *the Discriminatory Business Practices Act* does not allow discrimination based on geographical location of businesses, this criteria cannot be used to disqualify bidders, but can still be used to discourage firms from supplying fireworks manufactured using children as slave labour.

It is recommended that this policy be revised to include all products purchased by the City and that it be adopted by the new City of Toronto to continue to advise suppliers that the City of Toronto does not wish to encourage the use of products manufactured in factories where children are used as slave labour.

This recommended policy is included in Appendix “A”.

(2) Business with companies who have moved out of Metropolitan Toronto (applies to Public Tenders over \$100,000.00 and Invitational Tenders from \$20,000.00 to \$100,000.00):

In 1994, the former City of North York Council adopted a policy of not doing business with vendors who have moved out of Metropolitan Toronto since January, 1989 unless their bids are at least 10 percent lower than a bid submitted by a company within Metropolitan Toronto.

The Discriminatory Business Practices Act prevents discrimination in Ontario on the grounds of race, creed, colour, nationality, ancestry, place of origin, sex or geographical location of person or persons employed in or engaging in business.

The City Solicitor has advised that the implementation of such a policy would likely be contrary to the *Discriminatory Business Practices Act* which precludes discrimination when entering into contracts or engaging in business based on the geographical location of the person or business.

It is therefore recommended that the new City of Toronto not adopt a similar policy.

(3) Local Preference:

The former Borough of East York and former Cities of Etobicoke, Scarborough and York had a local purchasing preference. In addition, the former Borough of East York had a Metropolitan Toronto purchasing preference.

Although these local preferences have never been challenged, it should be noted that the *Province of Ontario Discriminatory Business Practices Act* prevents discrimination based on geographical location of the person or business, as mentioned previously.

If the City wishes to incorporate a local preference procurement policy, special legislation should be sought to exempt the City from the application of the Act. Alternately, Council could request the Province to make and file a regulation under the Act to exempt the City from its provisions. However, it should be noted that local preference could bring out retaliatory action whereby Toronto businesses could be restricted from obtaining business in other municipalities.

All governments in Canada have been working to eliminate barriers to inter-provincial trade through the negotiation of the Agreement on Internal Trade (AIT) - which came into effect for the provinces and the Federal Government in July 1995. Further negotiations to find ways of ensuring that businesses obtain fair and transparent access to tenders by municipalities, schools, post-secondary institutions, and public hospitals across the country, through the elimination of restrictive bidding practices and local preferences, resulted in extending the requirements of the AIT to the Municipal, Academic Institutions, Schools and School Boards, and Hospitals (MASH) sector in July 1999.

In July 1995, the Ontario-Quebec Trade Agreement came into effect. The Agreement applies to all municipal procurement over \$100,000.00 in value. The purpose of the Agreement was to remove discriminatory purchasing policies against firms not located in either province in obtaining government contracts (including municipal government contracts). Introducing a local preference would counteract these initiatives.

It is therefore recommended that the new City of Toronto not adopt a local Preference policy.

(4) Canadian Content:

The former Cities of Etobicoke, Scarborough, Toronto, York, North York, the former Borough of East York, and the former Municipality of Metropolitan Toronto all had Canadian Content policies.

The policies of the former Borough of East York, and former Cities of Scarborough and York allowed for a preference to materials having the highest Canadian Content. The former City of Etobicoke policy allowed for a preference for Canadian goods and services on the basis of all else being equal.

In 1981, the former Cities of North York, Toronto and the Municipality of Metropolitan Toronto adopted the Canadian Content Policy developed by the Province of Ontario. The policy allows for a 10 percent preference for Canadian content in goods and services. The rationale for the 10 percent Canadian Content preference is to stimulate and encourage Canadian manufacturing activity and to assist Canadian suppliers in competition for the supply of goods and services to government.

Since the former City of North York, City of Toronto and Metropolitan Toronto policy allows for a method to measure Canadian Content, provides a 10 percent price preference and is consistent with Provincial policy, it is recommended that this policy be adopted for the new City of Toronto.

This recommended policy is included in Appendix "A".

(5) Code of Ethics:

The former Cities of Etobicoke, Scarborough and Toronto applied a Code of Ethics for their purchasing functions.

The former Borough of East York had a policy to prevent employees from having interest in City contracts.

The former Cities of Etobicoke and Scarborough applied the National Institute of Government Purchasing (NIGP) and Purchasing Management Association of Canada (PMAC) Code of Ethics to all staff involved in the procurement process. The former City of Toronto developed its own Purchasing Code of Ethics.

Since NIGP and PMAC are recognized purchasing institutions of which the City Purchasing and Materials Management Division is a member, it is recommended that the Code of Ethics of these institutions be adopted for staff involved in the procurement process. This requirement has been included in Section 3 of the draft By-law (Appendix "B").

(6) Consultants/Professional Services:

The Purchasing and Materials Management Division is currently working with the Works and Emergency Services, Audit, and the CAO's Office in developing a new policy for Selection of Professional and Consulting Services for the City. Currently Consultant Selection and Contracting for Professional Services by PMMD is done through an open and competitive bidding process as follows:

- (a) For Contracts up to \$5,000.00 in value:

Department obtains a maximum of three written proposals, evaluates proposals and awards to successful proponent by issuance of a Departmental Purchase Order (DPO). This procedure is used for a one-time purchase of Consulting/Professional Service and not for repetitive contracts with the same firm for the same service.

- (b) Contracts above \$5,000.00 in value:

- (i) Department prepares Request for Proposal (RFP) document and forwards to Purchasing and Materials Management Division (PMMD);
- (ii) Purchasing and Materials Management Division places advertisement in newspaper or sends a Pre-qualification or RFP document to firms on the PMMD mailing list for the type of consulting service required. If department requests pre-qualification route, an RFP is issued to all pre-qualified firms upon completion of pre-qualification process. The documents state the time and date that replies must be received;
- (iii) After the proposals are received, PMMD forwards a summary of the proposals received along with the proposals to the department;
- (iv) Department reviews proposals received in consultation with PMMD;
- (v) Short-list of consultants selected are invited to review their proposals with department and PMMD staff. Evaluation conducted to determine successful proponent in accordance with RFP evaluation criteria; and
- (vi) Final selection of consultant made and authority to award contract is obtained.

Once a new policy is developed, it will be reported separately to Committee and Council.

- (7) Cooperative Purchasing:

The former Cities of Etobicoke, Scarborough, Toronto and York all had policies allowing them to participate in joint or cooperative purchasing with other publicly funded agencies. As it may be beneficial for the new City of Toronto to participate with other publicly funded agencies in cooperative purchasing ventures to achieve cost savings through bulk price discounts, or to allow smaller public funded agencies the benefit of savings through bulk price discounts, this practice should continue.

Section 12 has therefore been included in the draft Purchasing By-law (Appendix "B") allowing the Purchasing Agent to participate in cooperative purchasing.

- (8) Disposal of Surplus/Obsolete/Salvageable Goods:

The former Borough of East York, the former Cities of Etobicoke, North York, Scarborough and Toronto, and the former Municipality of Metropolitan Toronto all had a disposal policy for surplus/obsolete/salvageable goods.

The policies allowed for first re-using these goods within the former municipalities before they are disposed of at the highest return. The methods of disposal specified are by public auction, public sale or trade-in (in the case of vehicles or equipment). Seeing that these items are purchased by public funds, we should continue the process of disposing through public auctions or sale, or by trade-in for the purchase of new equipment, as these methods would provide the highest return to the City.

Section 11 has therefore been included in the draft By-law (Appendix "B") which will allow for the sale or disposal of surplus/obsolete/salvageable goods by public auction or solicitation, by trade-in or any other method Council may authorize.

(9) Contracting without Tenders, Request for Proposals or Request for Quotations:

The former Borough of East York, the former Cities of Etobicoke, Scarborough, North York, Toronto, York, and the former Municipality of Metropolitan Toronto all had policies to cover purchases of emergency requirements and/or in cases where immediate purchase of goods and services are required to prevent delays in departmental operation which would affect public health, public service or public safety. The purchases are made by the Purchasing Agent, at the lowest possible cost, upon instruction from the Department Head responsible for the operation or the Chief Administrative Officer (CAO).

Since there is always a possibility of unforeseen emergencies in the new City of Toronto, it is recommended that this practice continue and sub-section 4(3) has been included in the draft By-law (Appendix "B") to cover this requirement.

(10) Environmentally Responsible Purchasing:

Since the Environmental Task Force had requested to report on a new Environmentally Responsible Purchasing Policy, a separate report was forwarded to the Strategic Policies and Priorities Committee recommending a new Environmentally Responsible Purchasing Policy for the City of Toronto. Council approved the policy at its meeting on October 26, 27 and 28, 1999.

(11) Live Animal Testing:

To discourage the purchase and use of cleaning and maintenance products tested on live animals, in 1992 the former City of Toronto Council adopted a recommendation from the former City of Toronto Board of Health, which read as follows:

“That the statement ‘The City discourages the use of Cleaning and Maintenance products tested on live animals’ be added to all future City of Toronto cleaning and maintenance product quotations.”

Former City of Toronto purchases for these products have included the above statement.

In order to continue to discourage the testing of cleaning and maintenance products on live animals, it is recommended that the new City of Toronto adopt this policy.

This recommended policy is included in Appendix “A”.

(B) Bid Committee:

Currently, there are 4 levels of awarding of contracts:

- (1) the Chief Administrative Officer or designate, up to \$500,000.00;
- (2) the Bid Committee, up to \$1,000,000.00;
- (3) Standing Committee of Council, up to \$2.5 million; and
- (4) Council, over \$2.5 million.

The first meeting of the Bid Committee was held on April 22, 1998.

The Bid Committee, as per the Interim Purchasing By-law, opens all tenders and awards all contracts up to \$1,000,000.00 in value. The establishment of the Bid committee has provided one-stop shopping for Bidders to deliver their tender documents and attend Tender Openings and awarding of contracts up to \$1 million.

Since its first meeting on April 22, 1998 up to November 30, 1999, the Bid Committee opened 375 Tenders and awarded 159 contracts. Contracts awarded during this period total \$127,062,681.00. This represents approximately 11 percent of total dollar value of all purchases processed by PMMD.

Standing Committees of Council, under the Interim Purchasing By-law can award contracts up to \$2.5 million. During this same period, Standing Committees of Council awarded 45 contracts representing \$67,440,766.00 or 6 percent of total dollar value of all purchases processed by PMMD.

Council awards all contracts over \$2.5 million. Council has awarded 57 contracts representing \$347,865,876.00 or approximately 31 percent of total dollar value of all purchases processed by PMMD.

At the former City of Toronto, contracts where the lowest bid meeting specifications and requirements was recommended for award, were awarded by the former City of Toronto Tender Committee, and no further approvals were required by Standing Committee or Council. All other cases (where the lowest bidder was not being recommended for award, where a written objection to the award was received, and Request for Proposals) were forwarded to the Standing Committee and Council for award.

At the former Metro Toronto, contracts where the lowest bid meeting specifications and/or requirements was recommended for award were awarded by the Standing Committees of Council, and forwarded to Council for information only. All other cases (where the lowest bidder was not being recommended for award, where a written objection to the award was received, and Request for Proposals) were forwarded to Council for award.

The former City and Metro contract awarding processes allowed for expeditious awarding of routine purchases without any unnecessary delays.

In reviewing the current purchasing process, it was found that the biggest delay in awarding of contracts greater than \$1.0 million in value is in obtaining Standing Committee and/or Council approvals, since after the Bids have been evaluated the award must first be reported to the appropriate Standing Committee and then forwarded to Council for approval. This delay can be a minimum of two weeks, but as high as five weeks, depending on Committee/Council schedules.

In order to ensure operational requirements are met, given the limited duration of the construction season, and to avoid scheduling and delivery problems for contracts for goods and services and materials required in day-to-day operations, the current process for awarding contracts can be streamlined.

As the number of contracts being awarded by the Committees of Council represent only 6 percent of total dollar value of purchases; it is recommended that the Bid Committee awarding limit be increased to \$2.0 million from \$1.0 million. The new awarding limit for the Bid Committee would allow approximately 17 percent of total dollar value of purchases, based on data up to November 30, 1999, to be awarded by the Bid Committee. This would allow faster processing of contracts and would apply only to contracts where the lowest bid meeting specifications and/or requirements is recommended for award. All other cases (where the lowest bidder is not being recommended for award, where a written objection to the award is received, and most Requests for Proposals where the lowest bid is not being recommended) would be forwarded to Standing

Committee of Council and/or Council for awarding.

To further streamline the award process, it is recommended that all contracts over \$2.0 million be awarded by the appropriate Standing Committee of Council and forwarded to Council for information only. This is currently the process for award of contracts up to \$2.5 million. The new award limit for Standing Committees would allow approximately 31 percent of total dollar value of purchases, based on data up to November 30, 1999, to be awarded by the Standing Committees. This would only apply to contracts where the lowest bid meeting specifications and/or requirements is recommended for award. All other cases (where the lowest bidder is not being recommended for award, where a written objection to the award is received, and most Requests for Proposals where the lowest bid is not being recommended) would be forwarded to Council for awarding.

The Table below summarizes the current and proposed awarding process:

Award By	Current	Proposed
CAO or Designate	Contracts up to \$500,000.	Contracts up to \$500,000.
Bid Committee	Contracts up to \$1 million where lowest bidder meeting specifications and requirements is recommended for award.	Contracts up to \$2 million where lowest bidder meeting specifications and requirements is recommended for award.
Standing Committee	Contracts up to \$2.5 million where lowest bidder meeting specifications and requirements is recommended for award.	Contracts greater than \$2 million where lowest bidder meeting specifications and requirements is recommended for award.
Council	Contracts greater than \$2.5 million in value, contracts where the lowest bidder meeting specifications and requirements is not being recommended or where a written objection to the award is received.	Contracts where the lowest bidder meeting specifications and requirements is not being recommended or where a written objection to the award is received.

The new proposed contract awarding process would allow for timely awarding of routine purchases - as was the case with the former City and Metro.

The above recommendations have been included in the draft Purchasing By-law in Appendix "B" (Clauses 8.(2)(b) and (c), and 9.(4)).

(C) Purchasing By-law:

The Interim Purchasing By-law (By-law No. 57-1998) was approved by Council at this meeting of March 4, 5 and 6, 1998 and amended by Council on June 5, 1998 (By-law 304-1998), July 29, 1999 (By-law No. 527-1999) and August 31, 1999 (By-law No. 549-1999). The Interim Purchasing By-law allows for the awarding of contracts as outlined earlier in this report.

Highlights of the proposed changes in the new By-law from the Interim Purchasing By-law include the following:

- (1) The new By-law requires that the Code of Purchasing Ethics established by the National Institute of Governmental Purchasing Inc. and the Purchasing Management Association of Canada apply to all staff involved in the procurement process. This will ensure that all City staff involved in purchasing follow ethical practices;
- (2) The new By-law provides for the Purchasing Agent to award contracts without the issuance of a Call or Request.

The former municipalities all had policies to cover this requirement in cases of emergencies, when competition is precluded because of the existence of sole source, patent rights, etc. and in cases where a Request or Call would adversely affect the interests of the City because of a fluctuating market. This will ensure uninterrupted provision of services by departments and best possible prices for the City. The new By-law also requires that the Purchasing Agent report these purchases to Council;

- (3) Under the provisions of the new By-law, Department Heads will be allowed to make an award for the purchase of any goods, materials or services up to \$5,000 (Departmental Direct Purchase Limit). This represents the current commitment level within the Departmental Direct Purchase Limit as determined by the Chief Administrative Officer. The Department Head will also be allowed to make any other award or commitment, as delegated or authorized by the Chief

Administrative Officer, and in accordance with the new Financial Control By-law being tabled at the February Policy and Finance Committee meeting. This will ensure departmental efficiency in allowing departments to process certain purchases as determined by the Chief Administrative Officer;

- (4) As mentioned earlier, in order to ensure operational/seasonal requirements and to avoid scheduling/delivery problems for contracts for goods, services and materials, the new By-law allows for an increase in Bid Committee awarding authority from \$1 million to \$2 million and Standing Committee awarding authority for any award of over \$2 million. This only applies to contracts where lowest bid meeting specifications and/or requirements is recommended for award. All other cases (where the lowest bidder is not being recommended for award, where a written objection to the award is received, and most Requests for Proposals where the lowest bid is not being recommended) will be forwarded to Council for award;
- (5) In order to ensure departmental operational requirements are met and to avoid unnecessary delays in awarding of contracts when Standing Committee and Council schedules are interrupted, the new By-law has a provision which will authorize the Bid Committee to make awards normally made by the Standing Committees when meeting schedules are interrupted, and these awards will be reported to Council by the Purchasing Agent;

- (6) The new By-law includes a provision, which will allow the Purchasing Agent to dispose of surplus materials or equipment at the best possible return for the City; and
- (7) As mentioned earlier, most of the former Toronto municipalities had policies to allow them to participate in cooperative purchasing with other publicly funded agencies to ensure savings through bulk price discounts. A provision has been included in the new By-law to allow the Purchasing Agent to continue to participate in cooperative purchasing.

The attached By-law was developed in conjunction with Finance-Accounting Services staff preparing the new Financial Control By-law to ensure that the two By-laws are consistent and complement each other. It also and has been circulated to all departments, Legal and Audit for review and comment. The Senior Management Team has reviewed this report and concurs with the report.

Conclusions:

To ensure consistent policies resulting in an efficient purchasing process which satisfies operational requirements and public accountability, it is recommended that the draft policies in Appendix "A" be adopted.

It is further recommended that to ensure continuity and efficiency in the purchasing function on behalf of the City, authority be granted for the introduction of a bill in Council in the form of the draft By-law, attached as Appendix "B".

Contact Name and Telephone Number:

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Appendix "A"
New Purchasing Policies

(1) Ban of Purchase of Products Manufactured In Factories Where Children Are Used As Slave Labour

Purpose:

To advise suppliers that the City of Toronto does not wish to encourage the use of products manufactured in factories where children are used as slave labour.

Policy:

Bidders must state where the products offered have been made. City Council does not wish to see products used that have been made in factories in countries where children are used as slave labour. Therefore, preference will be given to bidders that obtain products from any country other than the aforementioned, but this criteria will not be used to disqualify any bidder.

Procedures:

- (1) The policy will be included in all Requests and Calls issued by the Finance Department, Purchasing and Materials Management Division.
- (2) This policy will be applied in the evaluation of all Bids received.

(2) Canadian Content:

Purpose:

To stimulate and encourage Canadian manufacturing activity and to assist Canadian suppliers in competition for the supply of goods and services to government.

Policy:

The City may take into consideration the percentage of "Canadian Content" in goods offered when evaluating quotations.

The following definition of "Canadian Content" has been adopted by the City of Toronto:

"Canadian Content is the portion of the selling price (1) of a product or service that is related to the work performed in Canada. Canadian Content may also be calculated as the selling price less the cost of delivery (2) and indirectly (3) imported materials, labour, services and overhead."

- (1) Selling Price is the net selling price to the buyer after all discounts. It includes all

applicable Goods and Services tax, Provincial Sales taxes, excise taxes and tariffs.

- (2) Cost Of Direct Imports is that portion of the selling price associated with directly imported materials, labour, services and overhead and includes tariffs and the cost of transportation to the Canadian place of importation. (See below for examples).
- (3) Cost Of Indirect Imports that portion of the selling price associated with the cost of materials, labour, and services which while obtained through a Canadian supplier in fact originated outside Canada. (See below for examples).

For further information, refer to Canadian General Standards Board, Standard No. CAN2-147.3-82.

The “Canadian Content” of goods requested in this quotation must be calculated using the above definition and stated on the quotation sheet in the space provided.

For information of bidders, the following examples are provided to interpret several of the terms:

Cost of Direct Imports:

- (A) Directly Imported Material Cost - the cost of an electric motor bought directly from a firm producing it outside Canada. All duties paid and transportation costs to the Canadian place of importation and included in the cost of import.
- (B) Directly Imported Labour Cost - the labour cost of sewing together a glove in a facility outside of Canada from leather and other materials supplied from Canada.
- (C) Directly Imported Service Cost - the cost of design work performed outside Canada.
- (D) Directly Imported Overhead Cost - royalty or management fees paid outside Canada.

Cost of Indirect Imports:

- (A) Indirectly Imported Material Cost - the cost of an electric motor produced outside of Canada and purchased from a Canadian based distributor for incorporation into a product assembled or manufactured in Canada.
- (B) Indirectly Imported Labour Cost - the cost of labour associated with a situation where a company with manufacturing facilities in Canada used facilities outside of Canada for testing products.
- (C) Indirectly Imported Service Cost - a Canadian firm providing computer services used a computer located outside of Canada in the provision of the service.

- (D) Indirectly Imported Overhead Cost - a pipeline contractor used equipment purchased from sources outside of Canada.

How the Policy Works:

Let's say three suppliers submit acceptable bids on your intended purchase. They have also provided a statement of Canadian content, as requested. Company A distributes imported products; Company B assembles imported parts; Company C manufactures in Canada.

Price and Canadian Content of their Bids are:

	Company A	Company B	Company C
Total net bid price (including duty taxes and freight)	\$10,000	\$10,150	\$10,200
Less dutiable value of imported goods (per customs invoice)	-8,000	-5,000	-1,000
Canadian Content	\$2,000	\$5,150	\$9,200

To recognize the preference for Canadian content, the bids are reduced by 10 percent of their Canadian content.

	Company A	Company B	Company C
Total Net Bid Price	\$10,000	\$10,150	\$10,200
Less 10 percent of Canadian Content	-200	-515	-920
Evaluation Bid	\$9,800	\$9,635	\$9,280

Applying Ontario's Canadian preference policy to the above group of bids means the award goes to Company C because it met all specifications and had the lowest "evaluation bid."

The award to Company C, rather than the lowest bidder A, results in an increased

Procedures:

- (1) the policy will be included in all Requests and Calls issued by the Finance Department, Purchasing and Materials Management Division;
- (2) bidders will be requested, as part of their bid, to indicate the Canadian Content of goods/services they are offering to the City;

(3) the Canadian Content indicated by the bidder is used to calculate the evaluation bid price, as per the policy; and

(4) the Request or Call is awarded to the lowest evaluation bid meeting specifications and/or requirements.

(3) Live Animal Testing:

Purpose:

To discourage the purchase and use of cleaning and maintenance products tested on live animals.

Policy:

That the statement "The City of Toronto discourages the use of Cleaning and Maintenance products tested on live animals" be added to all City of Toronto cleaning and maintenance product Request for Quotations.

Procedures:

The above statement will be included in all Requests issued by the Finance Department Purchasing and Materials Management Division for cleaning and maintenance products.

Appendix "B"
City Of Toronto

BY-LAW No. _____

By-law to Establish Procedures and
Authority for the Procurement of Goods and Services and to Repeal Interim Purchasing By-law
No. 57-1998, as amended

WHEREAS The Council of the City of Toronto enacted By-law 57-1998 as an interim by-law for the procurement of goods and services;

WHEREAS it is desirable to enact a new by-law continuing the procedures established under the interim by-law with additional modifications;

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

(1) Definitions

In this By-law:

“Award” means the acceptance of a Bid or a Proposal by the Purchasing Agent, Department Head, the Bid Committee, Standing Committee or Council pursuant to the terms of this By-law;

“Approval by Council” means the funding approval authorized by the adoption of interim or final operating budgets or the capital budget and includes the approval of a project in a capital budget by the council of one of the former municipalities prior to amalgamation;

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

“Bid Committee” means the committee established under section 6.0 of this By-law;

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

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

“Commitment” means a contractual obligation for the purchase of goods, services or construction, including the execution of any document, in compliance with Clause No. 4.(1)(a), evidencing the obligation;

“Cooperative Purchasing” means procurement conducted by the Purchasing Agent on behalf of the City and one or more Public Agencies or the involvement of the Purchasing Agent in procurement by other Public Agencies which includes procurement on behalf of the City;

“Department Head” means any of the commissioners appointed by City Council with administrative responsibility for a department and includes the City Auditor and any person authorized by Council to act in the place of any of the commissioners or the City Auditor;

“Departmental Direct Purchase Limit” means the maximum dollar amount that any Department Head may expend to procure goods and services directly rather than through the offices of the Purchasing Agent, such amount not to exceed \$5,000.00 or such increased amount as approved by the Chief Administrative Officer in accordance with subsection 5.(2);

“Director” means 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 City Clerk;

“Financial Control By-law” means By-law _____, or successor by-law;

“Project” means the construction, repair or demolition of any improvement in or on real property including all costs normally associated therewith or any other work or undertaking;

“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;

“Public Agency” means any local board and commission and any non-profit corporation or municipal or government body carrying out a public function;

“Purchasing Agent” means the person holding the position of Director of Purchasing and Materials Management in the Finance Department and whose responsibility it is to supervise and carry out the procurement function on behalf of the City as per this by-law, and includes his or her designate;

“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;

“Request” means a solicitation from the City to external suppliers or providers to submit a Proposal;

“Solicitation” means the process of notifying prospective Bidders or Proponents that the City wishes to receive offers through a Bid or Proposal;

“Standing Committee” means any of the Standing Committees established under the City’s Procedural By-law, By-law 23-1998, as amended, or successor by-law; and

“Tender” means an offer in respect of a 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 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” means Chief Financial Officer and Treasurer of the City of Toronto.

(2) Applicability

The provisions of this By-law shall apply to all City Departments.

(3) 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.

4. Purchasing Agent

(1) The Purchasing Agent shall be responsible for:

- (a) determining, in consultation with the City Solicitor where necessary, and in accordance with policies and directives as may be provided from time to time by Council, the appropriate form and method by which all goods and services shall be procured on behalf of the City;
- (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 all staff involved in the procurement process;
- (c) the Solicitation of goods, services or construction;
- (d) determining the method 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 Quotations and Proposals and, in consultation with the Clerk, the place, date and time for the receipt and opening of Tenders and the making of Awards;
- (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 by-law;
- (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 who initiated the Request or Call, all Bids or Proposals which may not be awarded by the Bid Committee to the appropriate Standing Committee of Council;

- (j) generally monitoring, supervising and reporting to the Administration Committee, as required from time to time, on the procurement process; and
 - (k) act on behalf of Public Agencies when requested to do so by such bodies and where authorized by Council.
- (2) The Purchasing Agent shall be authorized to make an Award arising from the issuance of a Call or Request and enter into a Commitment in respect of the Award provided that the Award and Commitment is within the maximum dollar amount of any commitment authority delegated to staff, and that funds are available in the appropriate account, under the provisions of the Financial Control By-law, or any successor by-law and has the Approval by Council.
- (3) The Purchasing Agent shall be authorized to enter into a Commitment without the issuance of a Call or Request under the following circumstances:
- (a) when an event occurs that is determined by a Department Head or the Chief Administrative Officer 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 Purchasing Agent;
 - (b) when competition in respect of the goods and services is precluded because of the existence of a sole source, patent rights, copyrights, secret processes, control of basic raw material or similar restrictions;
- or
- (c) when, in the opinion of the Purchasing Agent, a fluctuating market for goods and services exists and the issuance of a Request or Call would adversely affect the interests of the City given rising market prices.
- (4) Where the dollar amount of any Commitment entered into under subsection 4.(3) is not within the maximum dollar amount of any commitment authority delegated to staff under the provisions of the Financial Control By-law, the Purchasing Agent shall report to Council through the Administration Committee at the earliest opportunity after entering into the Commitment.
- (5) Quotations and Proposals received by the Purchasing Agent in the location specified in the Request before the time stipulated therein for receipt, shall be opened by the Purchasing Agent at the time and location specified in the Request, and the names of the Bidders and Proponents shall be read out. The prices bid on Calls only, where appropriate in the discretion of the Purchasing Agent, shall also be read out. The prices bid on Requests 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.

- (6) The Purchasing Agent shall be authorized to cancel any Call or Request when requested by the Department Head who initiated the Call or Request and where:
 - (a) Bids or Proposals received are greater than the Approval by Council; or
 - (b) in the opinion of the Department Head responsible for the Call or Request,
 - (i) a change in the scope of work or specifications is required and therefore a new Call or Request should be issued, or
 - (ii) the goods or services to be provided by the Call or Request no longer meets departmental requirements.
- (5) Chief Administrative Officer and Department Heads:
 - (1) Despite subsection 4.(2), a Department Head or Director is authorized to make an Award in respect of and enter into a Commitment for consulting services, subject however to such Commitment by a Department Head or Director, including amounts being authorized under the provisions of the Financial Control By-law which authorization may include any permitted delegation to the Department Head or Director from the Chief Administrative Officer.
 - (2) A Department Head is authorized to make an Award and enter into a Commitment that is within the Departmental Direct Purchase Limit. Department Heads may further delegate such authority to a Director or other designate.
 - (3) The Chief Administrative Officer is authorized to determine from time to time, in consultation with the Treasurer and the Purchasing Agent, any increase to the Departmental Direct Purchase Limit.
 - (4) A Department Head or Director, as the case may be, may be responsible for Solicitation in respect of an Award authorized under this section if such Solicitation is explicitly authorized by the Purchasing Agent and is otherwise in accordance with the form and method of procurement determined by the Purchasing Agent under clause 4.(1)(a).
 - (5) When an event occurs that is determined by a Department Head or the CAO 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 Purchasing Agent to acquire such goods and services, the Department Head may make such purchases without the involvement of the Purchasing Agent. The Department Head must advise the Purchasing Agent and

the CAO of such purchases and report such purchases to the appropriate Standing Committee or Council in accordance with the provisions of this by-law. The Department Head shall report to Council through the appropriate Standing Committee at the earliest opportunity after making the purchase.

(6) Bid Committee:

- (1) There is hereby established a Bid Committee comprised of the following persons:
 - (a) the Chief Administrative Officer or his or her designate;
 - (b) the Chief Financial Officer and Treasurer or his or her designate;
 - (c) any Department Head who initiated the Call or Request that is before the Committee at any given meeting or part thereof, or his or her designate; and
 - (d) the City Clerk or his or her designate.
- (2) The City Clerk shall not have a vote but shall act as the chair of the Bid Committee.
- (3) A Department Head referred to in clause 6.(1)(c) is only entitled to vote in respect of the particular Call or Request which the City official initiated.
- (4) The City Solicitor, or his or her designate, shall provide legal advice to the Bid Committee when required.
- (5) A quorum of the Bid Committee shall be 2 voting members.
- (6) 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*.

(7) Duties of the 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 Purchasing Agent, the City Solicitor and other appropriate City officials.

(8) Duties of the Bid Committee:

- (1) Tenders received by the Clerk in the location specified in the Call before the time stipulated therein for the close of Tenders shall be opened at a meeting of a Bid Committee and the names of the Bidders and the prices offered by each, or a summary thereof, shall be read aloud and recorded by the Chair of the Bid Committee.
- (2) The Bid Committee is authorized to make an Award in respect of a Bid, if all of the following conditions are met:
 - (a) the Purchasing Agent, after consulting with the City official who has initiated the Call, has recommended the Award in the report submitted under clause 4(1)(i) as being in compliance with the terms of the Call;
 - (b) the amount of the Award is equal to or less than the Approval by Council and is equal to or less than \$2.0 million;
 - (c) the Award is to the lowest bidder whose Bid meets the specifications and requirements set out in the Call;
 - (d) there is no written objection to the Award filed with the Bid Committee before the Award is made; and
 - (e) all voting members of the Bid Committee who are present at the meeting vote in favour of the Award.
- (3) The Bid Committee is authorized to make an Award in respect of a Proposal, where;
 - (a) the scope of the subject work is defined in the Request;
 - (b) the requirements and specifications contained in the Request allow for a representative response from the industry or corporate sector being solicited;
 - (c) the evaluation criteria are set out in the Request;
 - (d) the Purchasing Agent, after consulting with the City official who has initiated the Request, has recommended the Award in the report submitted under clause 4.1(i) as being in compliance with the requirements of the Request;
 - (e) the conditions contained in Clauses 8.(2)(b), 8.(2)(d) and 8.(2)(e) are met; and

- (f) the Award is made only to the Proponent meeting the requirements of the Request while offering the lowest price for the scope of work.

(9) Standing Committee and Council:

- (1) If all the conditions set out in subsections 8.(2) or 8.(3) are not met or where the Bid Committee does not make an Award that it is authorized to make, the Bid or Proposal shall be referred to the Standing Committee of Council responsible for the program or service to which the Call or Request is related, in accordance with the provisions of Procedural By-law No. 23-1998, as amended from time to time.
- (2) Bids or Proposals referred to a Standing Committee shall be reported upon to the Standing Committee by the Purchasing Agent and the Department Head on whose behalf the Request or Call was made and, where necessary, the City Solicitor.
- (3) A Standing Committee to which a Bid or Proposal is referred under subsection 0 shall
 - (a) be authorized to make an Award if,
 - (i) the conditions specified in subsection 8.(2), with the exception of the monetary limit set out in clause 8.(2)(b), or the conditions specified in subsection 8.(3), as applicable, are met, and
 - (ii) the amount of the Award is equal to or less than the Approval by Council, or
 - (b) make a recommendation to Council.
- (4) Where a Standing Committee has made an Award under subsection 9(3), the Award shall be reported to Council for information.
- (5) An Award that does not meet the requirements of subsection 8.(2), 8.(3) or clause 9.(3)(a) shall be made by Council.

(10) Bid Committee - Extended Authority:

- (1) If Standing Committee or Council meetings are cancelled or their normal meeting schedule interrupted because of a labour disruption or, if during the summer recess of Council, no Standing Committee meetings are scheduled or held, the Bid Committee is authorized to exercise the power of a Standing Committee to make an Award as set out in clause 9.(3)(a).
- (2) If the Bid Committee makes an Award under subsection 10.(1), the Award shall be reported by the Purchasing Agent to Council through the Administration Committee.

(11) Sale or Disposal of Surplus Materials or Equipment:

- (1) 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 Purchasing Agent to be surplus to present and future corporate requirements, the Purchasing Agent may either dispose of the materials or equipment by public auction or Solicitation deemed appropriate by the Purchasing Agent 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.
- (2) If the Purchasing Agent 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 or Request 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.
- (3) No surplus materials or equipment shall be disposed of except as follows:
 - (a) in accordance with subsections 11.(1) and 11.(2);
 - (b) by way of trade-in at fair market value as part of the acquisition of other materials or equipment; or
 - (c) as Council may otherwise authorize.

(12) Cooperative Purchasing:

- (1) The Purchasing Agent may participate with Public Agencies in Cooperative Purchasing.
- (2) Participation in Cooperative Purchasing shall be in compliance with the provisions of this By-law to the extent that procurement results in a Commitment on behalf of the City.

(13) 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 Protection of Privacy Act*.

(14) Transition:

- (1) Interim Purchasing By-law No. 57-1998 as amended is repealed.

- (2) Notwithstanding subsection 14.(1), the provisions of Interim Purchasing By-law No. 57-1998 shall continue to apply to Calls or Requests issued prior to the date of enactment of this By-law and such provisions are incorporated in this By-law for that purpose.

ENACTED AND PASSED this _____ day of _____, A.D. _____.

Mayor

City Clerk

Councillor Bill Saundercook, York-Humber appeared before the Policy and Finance Committee in connection with the foregoing matter.