

Purchasing Policies and By-law

(City Council on July 4, 5 and 6, 2000, amended this Clause:

(1) by amending Recommendation No. (I)(ii) of the Administration Committee by:

(a) deleting those portions pertaining to Recommendations Nos. (7)(b) and (c) embodied in the joint report dated May 29, 2000, from the Chief Administrative Officer, the Chief Financial Officer and Treasurer and the Commissioner of Economic Development, Culture and Tourism, as amended by the Administration Committee, and inserting in lieu thereof the following:

“(7)(b) as part of the procedures, the Purchasing and Materials Management Division, in consultation with other City Officials, as required, apply a ‘disclosure’ mechanism which includes:

- (i) provision in the call that a bidder/proponent is 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 official, appointed member of any City board, agency, commission, task force, or related organization, is disclosed to the contact party identified in the competitive call document;*
- (ii) such disclosures to be submitted to the City Clerk up to the time of award of the competitive call; and*
- (iii) the City Clerk being required to provide the disclosure information upon request and to post the disclosure information on the City’s web site;*

(7)(c) Council may continue to invoke a ‘prohibition’ mechanism which includes a ‘No Lobbying’ provision whereby a bidder/proponent and representatives employed or retained by them can only present their arguments advancing or opposing a bid/proposal in a public forum of Council (Committees, Task Forces, Boards of City agencies, boards or commissions, or the Boards of City-owned organizations) or the media; and to the contact party identified in the competitive call;”; and

(b) adding to the recommendations embodied in the joint report dated May 29, 2000, from the Chief Administrative Officer, the Chief Financial Officer and Treasurer

and the Commissioner of Economic Development, Culture and Tourism, the following new Recommendation No. (7)(d):

“(7)(d) in the interim, the Purchasing Materials Management Division, in consultation with other City officials, as required, apply a ‘disclosure’ mechanism including the above provisions in (7)(b)(i), (ii) and (iii) for all Tender, Quotation and Proposal Calls estimated to be above the Bid Committee award limit;”;

(2) by deleting Recommendation No. (I)(iii) of the Administration Committee and inserting in lieu thereof the following new Recommendation No. (I)(iii):

“(iii) amending Recommendation No. (11) to read as follows:

“(11) authority be granted for the introduction of a Bill in Council in the form of the draft by-law, attached as Appendix ‘G’, to establish procedures and authority for the Procurement of Goods and Services, subject to the awarding limit for contracts being as follows:

Award by	Amount
CAO or Designate	Contracts up to \$500,000.00.
Bid Committee	Contracts up to \$2.0 million, where lowest bidder meeting specifications and requirements is recommended for award.
Standing Committee	Contracts greater than \$2.0 million but not greater than \$5.0 million, where lowest bidder meeting specifications and requirements is recommended for award.
Council	Contracts greater than \$5.0 million in value; contracts where the lowest bidder meeting specifications and requirements is not being recommended for award; or where a written objection to the award is received.

(3) to provide that the procedures in regard to lobbying to be applied to City Councillors also be applied to City staff; and

(4) by adding thereto the following:

“It is further recommended that:

(a) the Chief Financial Officer and Treasurer be requested to include in her forthcoming report regarding purchasing procedures, the applicability of these disclosure provisions to Tender, Quotation and Proposal Calls estimated to be at or below the Bid Committee’s award limit; and

- (b) *the Chief Financial Officer and Treasurer, the City Solicitor and the Commissioner of Community and Neighbourhood Services be requested to submit a joint report to the Administration Committee, as soon as possible, on how to stimulate and encourage the utilization of companies which employ and/or train disadvantaged youth and how this can be taken into consideration when evaluating quotations.”)*

The Administration Committee recommends:

- (I) the adoption of the joint report (May 29, 2000) from the Chief Administrative Officer, the Chief Financial Officer and Treasurer and the Commissioner, Economic Development , Culture and Tourism subject to:**
- (i) **amending Recommendation No. (5) by deleting the figure of \$5,000.00 and inserting in lieu thereof the figure of \$7,500.00” so that Recommendation No. (5) now reads as follows:**
- “(5) the Departmental Direct Purchase Limit in the final Purchasing by-law contained in Appendix “G” 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 \$7,500.00 or such increased amount as approved by the Chief Administrative Officer in accordance with subsection 5(2)”;**
- (ii) **amending Recommendation No. 7 to read as follows:**
- “(7) the following procedures in regard to lobbying be applied:**
- (a) **the Purchasing and Materials Management Division in consultation with other City officials, as required, identify criteria to manage lobbying on those competitive calls characterized by special circumstances including high-value contracts, high profile contracts, long-term contracts, and/or the likelihood of intense lobbying jeopardizing objective decision-making, and report on such criteria to the Administration Committee by September, 2000;”;**
- (b) **in the interim, the Purchasing and Materials Management Division, in consultation with other City officials, as required, apply a “disclosure” mechanism which includes:**
- (i) **provision in the call that a bidder/proponent is 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 official, appointed member of any City board, agency, commission, task force, or related organization, is disclosed to the contact party identified in the competitive call document;

(ii) such disclosures to be submitted up to the time of award of the competitive call; and

(iii) the City Clerk being required to provide the disclosure information upon request and to post the disclosure information on the City's web site;

(c) Council may continue to invoke a "prohibition" mechanism including a "no Lobbying" provision such that a bidder/proponent and representatives employed or retained by them can only present their arguments advancing or opposing a bid/proposal in a public forum of Council (Committees, Task Forces, Boards of City agencies, boards or commissions, or the Boards of City owned organizations) or the media; and to the contact party identified in the competitive call;"; and

(iii) amending Recommendation No. 11 to read as follows:

“(11) authority be granted for the introduction of a bill in Council in the form of the draft by-law, attached as Appendix “G”, to establish procedures and authority for the Procurement of Goods and Services, subject to the awarding limits being as set out in the table embodied in the aforementioned report summarizing the current awarding process;”;

(II) that City Council reiterate its 1999 request to the Provincial Government, through the Minister of Municipal Affairs and Housing, to provide legislation authorizing the enactment by the City and its local boards, of lobbyist registration by-laws including enforcement provisions, based upon the New Ontario Lobbyist Registry legislation; and

(III) that the Chief Administrative Officer, in consultation with the City Solicitor and any other appropriate officials, be requested to report to the September, 2000, meeting of the Administration Committee on how best to apply these standards of conduct as it relates to lobbying of employees and officials of the City's Agencies, Boards and Commissions, Task Forces and Special Purpose Bodies.

The Administration Committee submits the following joint report (May 29, 2000) from the Chief Administrative Officer, the Chief Financial Officer and Treasurer and the Commissioner, Economic Development, Culture and Tourism:

Purpose:

To respond to the Administration Committee request of March 21, 2000, for further reports on the new proposed Purchasing Policies and By-law.

Source of Funds:

Not Applicable.

Recommendations:

It is recommended that:

- (1) the Policy for the Purchase of Products Manufactured in Factories where Children are used as Slave Labour or Other Exploitive Circumstances which Impedes Child Development, as outlined in Appendix "D" of this report, be adopted;
- (2) the Canadian Content Policy as outlined in Appendix "A" of the February 3, 2000, report from the Chief Financial Officer and Treasurer, be adopted;
- (3) the Live Animal Testing Policy, as outlined in Appendix "E" of this report be adopted;
- (4) the Policy on the Purchase of Coffee, as outlined in Appendix "F" of this report, be adopted;
- (5) the Departmental Direct Purchase Limit in the final Purchasing by-law contained in Appendix "G" 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 \$5,000.00 or such increased amount as approved by the Chief Administrative Officer in accordance with subsection 5(2)";
- (6) the City not adopt a lobbyist registry policy applicable to all competitive calls issued by the City, but tailor the policy as outlined in recommendation (7);
- (7) The following procedures in regard to lobbying be applied:

- (a) the Purchasing and Materials Management Division in consultation with other City officials, as required, identify criteria to manage lobbying on those competitive calls characterized by special circumstances including high-value contracts, high profile contracts, long-term contracts, and/or the likelihood of intense lobbying jeopardizing objective decision-making, and apply such criteria on a one-year trial basis to such competitive calls;
- (b) during the trial period the Purchasing and Materials Management Division in consultation with other City officials, as required, apply either of the following methods as deemed appropriate by the Purchasing Agent for departments to manage lobbying activities in their competitive calls that are characterized by special circumstances:
 - (i) a “disclosure” mechanism which includes:
 - (a) provision in the call that a bidder/proponent is 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 official, appointed member of any City board, agency, commission, task force, or related organization, is disclosed to the contact party identified in the competitive call document;
 - (b) such disclosures be submitted up to the time of award of the competitive call; and
 - (c) the Purchasing and Material Management Division be required to provide the disclosure information upon request; or
 - (ii) a “prohibition” mechanism which includes:
 - (a) a “no Lobbying” provision is implemented where a bidder/proponent and representatives employed or retained by them can only present their arguments advancing or opposing a bid/proposal in a public forum of Council (Committees, Task Forces, Boards of City agencies, boards or commissions, or the Boards of City owned organizations) or the media; and the contact party identified in the competitive call;
- (8) the term “Lobbyist” continue to be defined by the three categories used in the City of Toronto Code of Conduct for Council Members, and by the Province of Ontario;
- (9) “Lobbying activities” around competitive calls issued by the City be defined as: “communications by bidder/proponent and/or a representative with members of Council,

City officials, and or appointed members of City agencies, boards and commissions, task forces and other related organizations, to promote or oppose any bidder or proponent”;

- (10) the Purchasing Policies and By-law be reviewed annually by the Chief Financial Officer and Treasurer, in consultation with the City Auditor and City departments, and report to Committee and Council only if additions or revisions are required to ensure that best practices are being applied in City purchasing;
- (11) authority be granted for the introduction of a bill in Council in the form of the draft by-law, attached as Appendix “G”, to establish procedures and authority for the Procurement of Goods and Services once Council has approved the final Departmental Direct Purchase Limit, Bid Committee Award Limit, and Standing Committee Award Limit;
- (12) the Economic Development, Culture and Tourism Business and Local Partnership section of the Economic Development Office, and the Finance Department Purchasing and Materials Management Division undertake a consultation process with business representatives and report to the Administration Committee on recommendations to improve purchasing practices and remove barriers to small and medium sized businesses; and
- (13) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Council Reference/Background History:

At its meeting of February 29, March 1 and 2, 2000, in adopting Clause No. 4 contained in Report No. 3 of The Policy and Finance Committee, headed “Purchasing Policies and By-law”, Council:

- (1) referred the following Recommendation No. (1) to The Administration Committee:

“(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) enacted an 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
- (3) referred the following proposed amendments to the Purchasing By-law embodied in the communication dated March 1, 2000, from Councillor Adams, 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";

- (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 City Clerk in a Communication dated March 9, 2000, forwarded the aforementioned to The Administration Committee.

At its meeting of March 21, 2000, The Administration Committee:

- (1) Referred the communication (March 9, 2000) from the City Clerk to the Chief Financial Officer and Treasurer, the Chief Administrative Officer and the City Solicitor for report thereon to The Administration Committee for its meeting scheduled to be held on April 25, 2000; and
- (2) Amended the communication (March 21, 2000) from Councillor John Adams (contained in Appendix "A") by:
 - (1) adding the following words to Item No. (3), "and a review of relevant international agreements", so that Item No. (3) now reads as follows:

"(3) concise evaluation of other cities' procurement policies, with specific attention to New York City, the City of Chicago and the American Bar Association/Massachusetts Institute of Technology, et al "Model Procurement Code Revision Project", 1999, and a review of relevant international agreements;"
 - (2) adding the following additional items Nos. (5) and (6):

"(5) staff consult with relevant community organizations and interested Councillors";

“(6) staff report, in consultation with the staff of Enterprise Toronto, on matters to simplify the purchasing process, including plain language forms particularly for smaller projects”; and

referred the aforementioned communication, as amended, to the Chief Financial Officer and Treasurer, the Chief Administrative Officer and the City Solicitor for report thereon to the aforementioned meeting of The Administration Committee;

- (3) referred the communication submitted by Mr. Bruce Davis, Urban Intelligence Inc. (contained in Appendix “B”), to the Chief Financial Officer and Treasurer, the Chief Administrative Officer and the City Solicitor, for report thereon to the aforementioned meeting of the administration committee;
- (4) requested the appropriate staff to report to the aforementioned meeting of The Administration Committee on the provincial process regarding lobbying as well as how they define a lobbyist, such report to include how successful the Province has been in dealing with lobbyists; and
- (5) deferred consideration of the following motion until the aforementioned meeting of the Administration Committee:

Moved by Councillor Holyday:

“That the Committee recommend to Council that the section pertaining to Departmental Direct Purchase Limit contained in Appendix “B” embodied in the report (February 3, 2000) from the Chief Financial Officer and Treasurer 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 \$5,000.00 or such increased amount as approved by the Chief Administrative Officer in accordance with subsection 5(2);”

Discussion:

- (1) Review of Purchasing Policies:

The policies recommended in the report from the Chief Financial Officer and Treasurer, dated February 3, 2000, (attached) have been reviewed once again, and the following is a summary of our findings:

- (a) Purchase of Products Manufactured in Factories where Children are used as Slave Labour:

The recommended policy has been reviewed with Free the Children International; an organization dedicated to freeing children from poverty and exploitation. As a result of this recent review, the suggested policy has been revised to apply not only to cases where children are used as slave labour, but also to other exploitive circumstances which impede child development (i.e., education, health, abuse, etc.).

It is therefore recommended that the policy on the “Products Manufactured in Factories where Children are used as Slave Labour or other Exploitive Circumstances which Impedes Child Development”, as in Appendix “D” of this report, be adopted.

(b) Canadian Content:

The recommended policy was reviewed with the Ontario Government Management Board Secretariat who advised that the recommended Policy, which was developed by the Ontario Government, is still being applied as recommended in this report.

Since all former municipalities had a Canadian Content Policy, it is recommended that the Canadian Content Policy, as recommended in the February 3, 2000, report from the Chief Financial Officer and Treasurer and included as Appendix “A” of that report, be adopted.

(c) Live Animal Testing:

The recommended policy was once again reviewed with Animal Alliance; an association dedicated to animal protection through public education and legislative activity.

As a result of the recent review, the wording of the policy recommended in the February 3 report has been revised to read more positively.

It is therefore recommended that a Live Animal Testing Policy, as in Appendix “E” of this report be adopted.

(d) Environmental Purchasing:

A deputant at the March 21 meeting of The Administration Committee recommended that the By-law should have regard to the Environmental Purchasing Policy.

As the new Environmentally Responsible Procurement Policy was approved by Council in October 1999, all Calls, RFP’s and solicitations since that time have

regard to the policy. Section 14.0 of Interim By-law No. 151-2000 and the new final by-law (Appendix "G") reflect this suggestion.

(2) By-law Review:

The new Interim Purchasing By-law No. 151-2000, as approved by Council at its meeting of February 29, March 1 and 2, 2000, had the following amendments from the report from the Chief Financial Officer and Treasurer, dated February 3, 2000:

(a) Departmental Direct Purchase Limit:

The Departmental Direct Purchase limit was increased from the recommended \$5,000 to \$10,000.

It should be noted that the Departmental Direct Purchase limit is only used in cases of one-time and/or emergency purchases and not for repetitive purchases with the same supplier for goods or services used in daily operational requirements.

In order to ensure best price possible for goods and services used in daily operational requirements, the Purchasing and Materials Management Division of the Finance Department issues annual quotation calls to establish annual contracts for these requirements which results in bulk price discounts for the City. The departments would then purchase against those contracts. This method allows for best price possible to the City, as a bulk price discount is applied. Should departments be allowed to purchase these goods/services using their Departmental Direct Purchase limit, they would be paying more for the goods/services since there would be no bulk price discounts.

The Departmental Direct Purchase limit was determined as a result of the following:

- (i) a Service Rationalization Review conducted by an outside Consultant (Johnson-Smith International);
- (ii) the review of benchmark data obtained from the Centre for Advanced Purchasing Study (CAPS) of the Arizona State University (there are no Canadian organizations that have purchasing benchmark data to-date);
- (iii) a survey of the practices of 10 Canadian municipalities;
- (iv) input from all City departments;
- (v) internal review by the City Auditor requested by the Chief Administrative Officer; and

- (vi) recommendation from the City Auditor that was approved by the Chief Administrative Officer.

These reviews determined that the most appropriate Departmental Direct Purchase limit for the new City at the current time should be set at \$5,000. However, it was also agreed that this limit would be reviewed periodically and adjusted, if required.

The Policy and Finance Committee at its meeting of February 20, 2000, revised this limit to \$10,000. Council adopted the revised limit at its meeting of February 29, March 1 and 2, 2000, and it is included in the new Interim Purchasing By-law No. 151-2000.

However, Councillor Holyday, at the March 21, 2000, meeting of The Administration Committee, proposed that "Departmental Direct Purchase Limit", 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, remain at the original \$5,000 limit, or such increased amount as approved by the Chief Administrative Officer, not the \$10,000 amendment as proposed by The Policy and Finance Committee.

In view of the above, it is recommended that the Departmental Direct Purchase Limit remain at the original proposed \$5,000 limit. This revision has been included in section 1 of the new draft final by-law attached as Appendix "G".

- (b) The award limit of the Bid Committee remains at \$1 million. The Chief Financial Officer and Treasurer's report recommended \$2 million.

The original staff report dated February 3, 2000, recommended that the Bid Committee award limit be increased from \$1 million to \$2 million in order to ensure timely awarding of only those contracts where the lowest bidder meeting specifications and requirements is being recommended, and where no written objection to the award is received.

Keeping the Bid Committee award limit to \$1 million delays awarding contracts and in the completion of projects and delivery of goods will continue to be experienced.

It is therefore recommended that the award limit of the Bid Committee be increased to \$2 million as recommended in the Chief Financial Officer and Treasurer's report of February 3, 2000. The attached draft final by-law (Appendix "G") has incorporated this revision in section 8(2)(b).

- (c) The award limit of the Standing Committees was capped at \$5 million.

Similar to item (b) above, and as explained in the Chief Financial Officer and Treasurer’s report of February 3, 2000, delays are currently being experienced (two to five weeks) in awarding of contracts due to the time required to obtain Standing Committee and Council approval. In order to ensure timely awarding of contracts only in cases where the lowest bidder is being recommended for award and no written objections have been received, it was recommended that contracts greater than the Bid Committee award limit be awarded by the Standing Committees and forwarded to Council for information. The attached draft final by-law, Appendix “G”, has incorporated this revision in Section 9(3)(a)(ii).

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 \$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 \$5 million in value, contracts where the lowest bidder meeting specifications and requirements is not being recommended for award or where a written objection to the award is received.	Contracts where the lowest bidder meeting specifications and requirements is not being recommended for award 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 experience at the former City and Metro governments.

The above recommendations have been included in the draft Purchasing by-law in Appendix “G” (Clauses 8(2)(b) and 9(3)(a)(ii).

- (d) Benchmark and other Jurisdictions:

An evaluation and review of policies and by-laws of 17 other municipalities, along with those of the 7 former Toronto municipalities was conducted.

A comparison of purchasing policies of other municipalities along with those recommended for the City of Toronto is contained in Appendix "C" of this report.

A comparison of policies of former municipalities with those recommend for the new City of Toronto is included in the February 3rd, 2000, report from the Chief Financial Officer and Treasurer.

As part of the review, the by-laws and policies of New York City, the City of Chicago and the American Bar Association/Massachusetts Institute of Technology, et al "Model Procurement Code Revision Project", 1999, were included. As for relevant international agreements, Canada has two, the North American Free Trade Agreement (NAFTA) and the General Agreement on Trade and Tariffs (GATT). The Province of Ontario, Ministry of Government Services, has advised that neither of these agreements apply to municipal purchasing, and that they are not aware of any international agreements that apply to municipal purchasing. We have also consulted with PMAC, NIGP and the National Association of Purchasing Managers (NAPM), who have advised that they are not aware of any international agreements that apply to municipalities.

An evaluation of the above-mentioned by-laws has concluded that our recommended policies and by-law are similar in form and content to those of other municipalities. Some include administrative procedures in their document, while others do not, and some include all applicable policies in their by-laws, while others state them separately.

To ensure faster and easier review and updating of the policies, we have stated our policies separate from the by-law and have not included administrative procedures in our by-law to ensure most up-to-date administrative procedures, without having to go through a by-law revision each time.

(e) Public Reading of Bids:

One of the deputants at the March 21 meeting of the Administration Committee requested that all bids be read in public, and that section 4(5) of the new Interim Purchasing Buy-law No. 151-2000 be amended.

Section 4(5) of the new Interim Purchasing By-law No. 151-2000, refers only to cases where Requests for Proposals (RFP) are being opened and where a Requests for Quotations (RFQ) are being opened that contain many unit prices offered by the bidders.

In cases where an RFP is opened, prices are not read out in public because the awarding of the RFP is not determined by price alone, the highest scoring proponent evaluated against criteria outlined in the RFP determines the award. However, the names of the proponents are always read out in public.

In cases where there are many unit prices offered, it could mean that staff would be reading out individual unit prices for hours. In order to make efficient use of staff time, bidders are asked to contact staff within two days of the opening for results as to who is the overall lowest bidder. However, the names of the bidders are once again, always read out in public. A survey of 10 other Canadian municipalities has revealed that this is the same process followed by all 10 municipalities. This was also the same process followed by all former Toronto municipalities.

Although in all cases when RFP's and RFQ's are opened, the names of the bidders/proponents are always read out in public, and in almost all cases prices are read out - in the two cases as described above, prices cannot be read out. We therefore recommend that this requirement as originally proposed by staff remain in the final by-law.

(f) Including Council Approved Budgets in Bid Documents:

One of the deputants at the March 21 Administration Committee meeting recommended that the budget amounts approved by Council be included in all Tender and Request for Proposal documents.

A survey of 13 other Canadian municipalities has shown that none provide Council approved amounts in their Tender and Request for Proposal documents.

The reason this is not done is to ensure the most competitive bids possible to ensure the best price possible. Providing Council approved amounts in the documents would result in bidders bidding close to those amounts, and there would be no incentive to provide lower bid prices if they already know what the City is willing to pay.

This amendment, as proposed by the deputant, is therefore not recommended.

(3) Ethics in Purchasing and Lobbyist Registration

(a) Code of Ethics:

The Human Resources Division of the Corporate Services Department has developed a Conflict of Interest Policy that includes a "Code of Conduct" exclusively for all City of Toronto employees. We have been advised that this Policy will be forwarded to the Personnel Subcommittee for approval at their meeting of June 12, 2000.

The Interim Purchasing By-law No. 151-2000 and the new final draft by-law (Appendix “G”) only address ethics applicable to staff involved in the procurement process.

A review of the purchasing by-laws of 17 other municipalities, and the by-laws of the seven former Toronto municipalities, has shown that some policies address purchasing ethics in their purchasing by-law by referring to their Code of Conduct. Others do not address purchasing ethics at all, and others refer to the Purchasing Ethics policies of the National Institute of Governmental Purchasing (NIGP) and the Purchasing Management Association of Canada (PMAC).

Rather than develop separate purchasing ethics for the City, it was decided to refer to the NIGP and PMAC Purchasing Ethics and the City’s Conflict of Interest Policy to cover Ethics in Purchasing practices. This was reviewed with the Clarkson Centre for Business Ethics of the Rotman School of Management, University of Toronto, NIGP and PMAC and they all concurred with this approach.

This is included in section 3.0 of the Interim Purchasing By-law No. 151-2000, and remains in the attached final by-law (Appendix “G”).

(b) Lobbyist Registration:

Council has requested staff to report on the motions as summarized below:

- (i) the process proposed for lobbyist disclosure and registry provisions relating to City issued competitive calls (Tenders, Quotations, and Requests for Proposals);
- (ii) the definition proposed for “lobbyist” vis-à-vis the above-mentioned proposed disclosure and registry process;
- (iii) the implementation of the above-mentioned provisions and processes on a one-year trial basis; and
- (iv) the provincial lobbyist registry process, definitions, and its success.

(i) General Comments:

Council has previously raised the matter of how best to deal with lobbyists and how to obtain and maintain a public list of lobbyists on various City initiatives. Reference is made to the June 1998 report from the Chief Administrative Officer and the City Solicitor titled, “Interim Report on a Registry of Lobbyists and Related Matters”, as well as the September

1999 report titled, “Code of Conduct for Members of Council - Inclusive of Lobbyist Provisions”.

Together, the findings of these reports can be summarized as follows: First, it was acknowledged that lobbying is an acceptable part of government processes, but requires management as appropriate and permitted. Second, it was found that municipalities lack the legal authority to enact and enforce an effective lobbyist registry system. Third, it was found that previous municipal experience in attempting to establish an effective lobbyist registry were fraught with legal and administrative difficulties and proved to be unworkable. Fourth, it was explained that the Ontario Lobbyists Registration Act that came into force on January 15, 1999 applied only to the government of Ontario and did not grant similar authority to municipalities. Fifth, Council approved a Code of Conduct as one vehicle for Council members to deal with lobbyists since it provides a set of checks and balances for standards of conduct that are also applicable when dealing with lobbyists.

(ii) Comments on the Purpose of Lobbyist Disclosure and Registry Provisions:

It is evident that real concerns exist about lobbying within government jurisdictions. It is incumbent upon them to protect the interests of the public. The government of Ontario, the government of Canada, the United States Federal Government and several of its States, Australia and Germany among others, have implemented registry provisions for lobbyists in order to:

- (a) assuage concerns about public policy decisions being made behind closed doors;
- (b) monitor and restrict situations where undue influence over elected members may occur;
- (c) reinforce conflict of interest and code of conduct standards for elected members in the carrying out of their official duties; and
- (d) instil confidence and provide the public with access to information on lobbyists.

At the municipal government level this is of particular relevance because of the frequency of direct contact with the general public and the nature of the City’s responsibilities and authorities, including the often high-value capital projects and long-term contracts that it manages. Relationships between lobbyists and City Council members, if conducted outside the

realm of public scrutiny, can erode public confidence in Council and weaken public participation in government.

(iii) Comments on the Existing Provisions to Manage Lobbying:

The purchasing and procurement policies of the City of Toronto already ensure certain safeguards and integrity in dealing with external organizations, as does the Council Code of Conduct. Independent of the presence of any specific City legislation to govern lobbying, there are also other mechanisms by which lobbyist behaviour and interaction with government officials is regulated including:

- (a) industry codes with which lobbyists representing a member sector must comply;
- (b) professional codes of conduct with which lawyers and other professionals acting as lobbyists must comply; and
- (c) the *Criminal Code*, for example, which covers influence peddling, bribery and fraud, municipal corruption and interference with the performance of official acts.

(iv) Comments on Improving Purchasing Procedures to Manage Lobbying:

It is recognized that Council does not possess the legal authority to establish, monitor or enforce an effective lobbyist registry system. The proposed motion to amend section 3 of the Purchasing by-law, Ethics and Purchasing, would in effect establish, monitor and enforce a lobbyist registry system. The proposed motion states:

“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.”

It is also recognized, however, that an interim method to manage lobbyists is desired by Council until the City receives a response to its (September 1999) request to the Province to, “provide legislation authorizing the enactment by municipalities and their local boards of lobbyist registry by-laws, including enforcement provisions ...”.

Two acceptable options are being presented here to fulfill the intent of the proposals to manage lobbying around competitive calls. Both methods provide a limited way to apply reporting requirements or restrictions on lobbyists within the confines of a competitive call process (i.e., conditions imposed not on all lobbyists but on bidders and proponents, including their representatives, to a Request or call). The methods would target those cases where intense lobbying is most likely to occur, receive intense public scrutiny, and run the real risk of resulting in undue influence over staff and Council members.

Since it is the case that most competitive calls do not involve special circumstances such as high-value, high profile, long-term or intensely political matters, it is recommended that lobbying provisions applicable to all competitive calls issued by the City not be adopted.

It is, however, recommended that the following procedures in regard to lobbying be applied:

- (a) The Purchasing and Materials Management Division in consultation with other City officials, as required, identify criteria to manage lobbying on those competitive calls characterized by special circumstances including:
 - (i) high-value contracts;
 - (ii) high profile contracts;
 - (iii) long-term contracts; and/or
 - (iv) the likelihood of intense lobbying jeopardizing objective decision-making,and apply such criteria on a one-year trial basis to such competitive calls.

- (b) During the trial period the Purchasing and Materials Management Division in consultation with other City officials, as required, apply either of the following methods as deemed appropriate by the Purchasing Agent for departments to manage lobbying activities in a competitive call characterized by special circumstances;
 - (i) a “disclosure” mechanism which includes:
 - (a) provision in the call that a bidder/proponent is 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 official, appointed member of any City board, agency, commission, task force, or related organization, is disclosed to the contact party identified in the competitive call document;

- (b) such disclosures be submitted up to the time of award of the competitive call; and
 - (c) the Purchasing and Material Management Division be required to provide the disclosure information upon request; or
- (ii) a “prohibition” mechanism which includes:
- (a) a “no Lobbying” provision is implemented where a bidder/proponent and representatives employed or retained by them can only present their arguments advancing or opposing a bid/proposal in a public forum of Council (Committees, Task Forces, Boards of City agencies, boards or commissions, or the Boards of City owned organizations) or the media; and the contact party identified in the competitive call is the sole contact point for all information releases related to the call;

These two methods to manage lobbying activities for competitive calls with special circumstances are mutually exclusive for any given call. The City could, however, have many different competitive calls out in the marketplace concurrently; some of which possess none, one, or the other of the mechanisms presented above.

- (v) Comments on Definitions and the Provincial Lobbyist Registry System:

Council requested information on the provincial lobbyist registry system that has been operating since early 1999. The City Solicitor has prepared a separate report for information on this matter, such report to be considered in conjunction with this section of the Purchasing Policies and by-law report.

Of relevance to the discussion here, are the definitions of “lobbyist” contained in the provincial Lobbyists Registration Act, 1998 and cited in

Schedule A to the aforementioned report by Legal. Three categories of lobbyist are defined and described, namely:

- (a) Consultant Lobbyist;
- (b) In-house Lobbyist (persons and partnerships); and
- (c) In-house Lobbyist (organizations).

These definitions are essentially replications of those used by the Federal Government in its lobbyist registry system. These are also the definitions that are contained in the Code of Conduct for Council Members, adopted by Toronto City Council in September 1999.

Staff were asked to report on the merits of using the following definition of Lobbyist:

“Lobbyists include an individual who is paid to communicate with members of Council, City officials, and/or appointed members of City agencies, boards and commissions, task forces and other related organizations, to promote or oppose any bidder or proponent [in City-issued competitive calls].”

The proposed definition is simpler and more appealing than the detailed definitions used by the Federal and Provincial Governments, and the City in its Code of Conduct, but it is also somewhat lacking in precision. A compromise can be obtained if Council adopts the proposed definition to define what constitutes “lobbying activities” respecting competitive calls, while continuing to use the definitions of “lobbyist” contained in the previously approved Code of Conduct.

It is, therefore, recommended that the term “Lobbyist” continue to be defined by the three categories used in the City of Toronto Code of Conduct for Council Members, and by the Province of Ontario.

It is further recommended that “Lobbying activities” around competitive calls issued by the City be defined as: “communications by bidder/proponent and/or a representative with members of Council, City officials, and or appointed members of City agencies, boards and commissions, task forces and other related organizations, to promote or oppose any bidder or proponent.”

(4) Other Issues:

(a) Responding to Disadvantaged or Non-Profit Organizations:

The City of Toronto has addressed the matter of how to use the procurement process to address disadvantaged groups. At its meeting of July 29, 30 and 31,

1998 (Clause No. 6 of Report No. 11 of The Corporate Services Committee) City Council adopted a report from the Commissioner of Corporate Services and the Chief Financial Officer and Treasurer to require that the suppliers of all goods and services to the City, its agencies, boards, commissions and special purpose bodies, adopt the City's policy of non-discrimination. This requirement was first adopted by the former City of Toronto in 1984, and was one of the elements of the Contract Compliance program. The Declaration Form regarding the adoption of the policy of non-discrimination also contains a reporting requirement regarding whether or not the majority ownership of the firm is held by employment equity designated group members, i.e., women, racial minorities, people with disabilities or aboriginal persons.

At its meeting of December 16 and 17, 1998 (Clause No. 2 of Report No. 19 of The Corporate Services Committee) City Council also approved the application of its Workplace Human Rights Policy, its Hate Activity Policy, and procedures to suppliers working for the City and its agencies, boards, commissions and special purpose bodies.

At its meeting of December 14, 15 and 16, 1999, (Clause No. 1 of Report No. 11 of The Policy and Finance Committee) City Council amended and approved the Recommendations of the Task Force on Community Access and Equity. These recommendations provide for the continuation of the activities previously approved by Council and encouraged the following:

- (i) the provision of information regarding the City's leadership role on employment equity, anti-discrimination and the elimination of harassment in various workplaces in the community; (Recommendation No. (63));
 - (ii) outreach activities to various communities to ensure that access is available to the City's procurement process; (Recommendation No. (64));
 - (iii) the utilization of strategies such as reducing the size of contracts and sub-contracts to increase the number of businesses owned by designated groups participating in the purchasing process; (Recommendation No. (65));
 - (iv) the provision of an annual report to Council on the proportion of expenditure of businesses owned by the City and the status of employment equity policies of suppliers; (Recommendation No. (66-a)) and
 - (v) the compilation of employment equity data every five years on the representation of designated groups within supplier workforces. (Recommendation No. (66-b)).
- (b) Ongoing Review Mechanism - By-law and Policies:

Although not mentioned in the February 3, 2000, report from the Chief Financial Officer and Treasurer, in order to ensure most up to date policies and practices, the policies and by-law will be reviewed at least once annually to ensure continued development of procurement practices.

It is, therefore, recommended that the Purchasing Policies and by-law be reviewed annually by the Chief Financial Officer and Treasurer and, in consultation with the City Auditor and City departments and report to Committee and Council only if additions or revisions are required to ensure that best practices are being applied in City purchasing.

(c) Consultations:

In developing City Purchasing Policies and By-law, City staff consulted with the following organizations:

- (i) Free The Children International;
- (ii) Transfair/Fair TradeMark Canada;
- (iii) Alternative Grounds Coffee House;
- (iv) The Coffee Association of Canada;
- (v) Animal Alliance;
- (vi) Ontario Sewer and Watermain Construction Association;
- (viii) National Institute of Governmental Purchasing;
- (ix) Purchasing Management Association of Canada;
- (x) National Association of Purchasing Managers;
- (xi) Ontario Government Ministry of Government Services;
- (xii) Canadian Council for International Cooperation;
- (xiii) Public Works/Government Services Canada - Supply Policy Division;
- (xiv) University of Toronto Clarkson Centre for Business Ethics of the Rotman School of Management; and
- (xv) 17 other Municipalities.

In addition, all City departments, the City Auditor and the City Solicitor were also consulted.

(d) Streamlining Purchasing for Small Business/Small Projects:

A review of the purchasing processes of other municipalities has shown that the purchasing system used by the City of Toronto is similar to that used by other large Canadian municipalities. In order to assist bidders in doing business with the City, Finance Department's Purchasing and Materials Management Division has numerous outreach activities, which it conducts by itself and in conjunction with other City departments (i.e., Access and Equity and Economic Development, Culture and Tourism).

Purchasing and Materials Management Division has instructional videos on how to do business with the City of Toronto in eight languages, and regularly conducts information sessions for suppliers recently added to the Bidder's List, as well as for special interest groups and ethno-racial and designated group business associations.

Another aspect of Purchasing and Materials Management Division's supplier development outreach initiatives is the presentation of information sessions on the City's Purchasing process to businesses and at conferences and trade shows.

Purchasing and Materials Management Division will maintain its supplier development and outreach initiatives, and, in consultation with Economic Development, Culture and Tourism, will continue to review with other governmental agencies the outreach initiatives and experiences undertaken, to further develop our outreach program to ensure that it is as easy as possible for suppliers to do business with the City.

Over the last 18 months, the Economic Development Office has worked closely with the Purchasing and Materials Management Division in a number of areas to promote an awareness of current City of Toronto purchasing procedures and improve access for small businesses for bidding on City contracts. Some of the recent initiatives and activities include joint presentations in the community to various business associations, including ethno-racial and designated group business owners, and joint presentations at local seminars and trade shows.

In addition, bidders application forms and information on how to do business with the City, prepared by the Purchasing and Materials Management Division, are available at the four Enterprise Toronto gateway locations. Our two divisions have been communicating in a number of areas to improve the types of marketing materials made available to small business, including web based promotional access with Enterprise Toronto, and additional seminars, videos, and up-to-date information packages, and to identify and remove any barriers to doing business with the City.

Staff from Economic Development, Culture and Tourism, under two separate reports, "Amending Fair Wage Schedules and Related Items" (Clause No. 3,

Report No. 4 of The Administration Committee, adopted as amended by Council on February 29, March 1 and 2, 2000) and “Purchasing Policies and By-law”, (Clause No. 4 of Report No. 3 of The Policy and Finance Committee, Report No. 22 of March 21 meeting of The Administration Committee), have been directed to report on the following:

- (i) A joint report of the Chief Administrative Officer and the Economic and Development, Culture and Tourism Commissioner for The Economic Development and Parks Committee, on barriers and access issues for small and medium sized businesses in Toronto to gain access to City of Toronto contracts; and
- (ii) Staff report, in consultation with the staff of Enterprise Toronto, on matters to simplify the purchasing process, including plain language forms, particularly for smaller projects; and
- (iii) Staff from the Small Business Section of the Economic Development, Culture and Tourism Department prepare a report on the purchasing system barriers to small business.

In order to effectively respond to the directions under two separate reports, staff recommend a cross departmental approach involving the Small Business and Local Partnership section of the Economic Development Office and Purchasing and Materials Management Division. It is recommended that a consultation process be undertaken involving entrepreneurs and small business, including ethno-racial and designated group business owners and various business associations throughout the City of Toronto.

Public meetings will be scheduled to discuss current practices/policies, identify small business needs/limitations, and formulate constructive recommendations to ensure purchasing practices provide accessibility to the widest possible small and medium sized business audience.

It should be noted that staff often get input from the business community on simplifying the purchasing process. A recent survey conducted by the Purchasing and Materials Management Division resulted in bidders expressing that the Tender Closing time of 9:00 a.m. was not convenient for them. As the majority requested a closing time of 1:00 p.m., the Tender Closing time was changed to 1:00 p.m.

(e) Purchase of Coffee:

It was requested by one of the members of the Administration Committee that a policy be developed on the Purchase of Coffee to ensure that coffee purchased by the City comes from farmers who have received fair payment for their work.

Discussions with the Coffee Association of Canada and Transfair/Fair TradeMark Canada has indicated that coffee from companies that support sustainable

agricultural policies in the coffee sector of producing countries, and are involved in programs that make a positive difference in the lives of coffee farmers or has a Transfair/Fair TradeMark Canada label ensures that the farmer has received fair payment for his/her work.

When purchasing coffee that has been awarded the Transfair/Fair TradeMark Canada label, or is from companies that support sustainable agricultural policies in the coffee sector of the producing countries, and are involved in programs that make a positive difference in the lives of farmers, we are promoting equal trading partnerships with coffee farmers in developing countries.

This practice ensures: a fair price paid to farmers; long term trading relationships develop; and affordable credit is advanced to farmers if requested.

It is therefore recommended that the City of Toronto advise suppliers that the City does not wish to encourage the purchase of coffee that comes from companies that do not support sustainable agricultural policies in the coffee sector of producing countries, and are not involved in programs that make a positive difference in the lives of coffee farmers or do not have the Transfair/Fair TradeMark Canada label.

It is therefore recommend that a policy on the Purchase of Coffee, as outlined in Appendix "F", be approved.

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 Appendices "D", "E" and "F" of this report, and the Canadian Content Policy - as outlined in Appendix "A" of the February 3, 2000, report from the Chief Financial Officer and Treasurer, 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 "G".

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Appendix "A"

The Communication from Councillor Adams, dated March 21, 2000, was as follows:

In recent months the City's procurement and purchasing practices have been the topic of much discussion. At issue is the consolidation of seven old purchasing by-laws into one new purchasing by-law and the implications these changes will have on other current City corporate and operational policies. While the current debate has largely been about internal or administrative aspects of the by-law, there are other broader issues, which I believe have been largely overlooked and require consideration.

In my opinion, the proposed procurement by-law requires further refinement and articulation. The areas where further clarification is needed include, but are not limited to:

- (1) An exclusive code of ethics for the City and its employees, (with specific input from the Clarkson Centre for Business Ethics of the Rotman School of Management, University of Toronto);
- (2) Specific language on how the City will respond to disadvantaged or non-profit organizations;
- (3) Concise evaluation of other cities' procurement policies, with specific attention to New York City, the City of Chicago and the American Bar Association/Massachusetts Institute of Technology, et. Al. "Model Procurement Code Revision Project", 1999;
- (4) Insertion of a mechanism that permits the continued development of procurement practices, namely an annual or biannual process for reviewing policies and concerns regarding matters like "small purchases", "sole source procurement" and "special procurement" and "emergency procurement".

One of the overarching goals of this City is to modernize our policies with simplicity, clarity, uniformity and purpose. A comprehensive procurement by-law will be an excellent instalment towards this goal. Indeed, the same structural, functional and comparative methodologies were used in the development of the Environmentally Responsible Procurement Principles in 1999. A city of our size and stature should expect no less evaluative consideration for the completion of

this process. Particularly, when these additions and refinements will have minimal administrative burden on staff.

Therefore, I am respectfully requesting that this matter be deferred and that a staff report on the above matters be submitted to the Administration Committee at the earliest possible meeting. The City of Toronto must consider these changes in order to ensure that our goal of better accountability is fulfilled.

Appendix "B"

The Communication from Mr. Bruce Davis of Urban Intelligence (undated) was as follows:

Suggested changes to the Purchasing By-law:

- (1) Public bids - Section 4(5) of the new purchasing by-law gives discretion to the Purchasing Agent whether or not to make bids public. We believe that Tender and Request for Quotation bids should be public.

Recommendation:

Delete “, where appropriate in the discretion of the Purchasing”

- (2) Approval by Council - is amount supposedly approved by Council for call for Tenders or Request for Proposals.

Recommendation:

“Approval by Council” amount should be included in Tender/RFP documents.

- (3) Environmental Purchasing Policy - City purchasing by-law should “have regard to” the Environmental Purchasing Policy.
- (4) Systemic barriers for vendors - The purchasing system is very complex for small companies. The paperwork is enormous, the terms are confusing and there is potential for staff to take advantage of this power imbalance. We recommend that staff from the Small Business Section of the Economic Development, Culture and Tourism Department prepare a report on the purchasing system barriers to small business.
- (5) Lobbyist registry. We support the amendment proposed by Councillor Adams as a way of increasing public scrutiny on the purchasing process.

Appendix "D"

Purchase of Products Manufactured in Factories where Children are Used as Slave Labour or Other Exploitive Circumstances which Impedes Child Development

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 or other exploitive circumstances which impedes child development.

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 or other exploitive circumstances which impedes child development. 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) Also included in all Requests and Calls issued by the Finance Department, Purchasing and Materials Management Division, will be the following statement:

"Bidders to state if products offered have been made in factories in
countries where children are used as slave labour or other exploitive
circumstances which impedes child development

Yes _____ No _____"

- (1) This policy will be considered in the evaluation of all Bids received.

Appendix "E"

Live Animal Testing:

Purpose:

To encourage the purchase and use of cleaning and maintenance products that have not been tested on live animals.

Policy:

That the statement “The City of Toronto encourages the use of Cleaning and Maintenance products that have not been tested on live animals” be added to all City of Toronto cleaning and maintenance product Request for Quotations.

Procedures:

- (1) The above statement will be included in all Requests issued by the Finance Department Purchasing and Materials Management Division for cleaning and maintenance products.
- (2) Also included in all Requests for Quotations issued for cleaning and maintenance products by the Finance Department Purchasing and Materials Management Division will be the following statement:

“Bidders to state if products that will be supplied have been tested on live animals

Yes _____ No _____”

- (3) This policy will be considered in the evaluation of all bids received for cleaning and maintenance products.

Appendix “F”

Purchase of Coffee:

Purpose:

To encourage the purchase of coffee from companies that support sustainable agricultural policies in the coffee sector of producing countries, and are involved in programs that make a positive difference in the lives of coffee farmers or have received the Transfair/Fair TradeMark Canada label.

Policy:

City Council encourages the supply of coffee from suppliers that support sustainable agricultural policies in the coffee sector of producing countries, and are involved in programs that make a positive difference in the lives of coffee farmers or have received the Transfair/Fair TradeMark Canada label.

Bidders must state if coffee offered is from companies that support sustainable agricultural policies in the coffee sector of producing countries and are involved in programs that make a positive difference in the lives of coffee farmers or has received the Transfair/Fair TradeMark Canada label. This criteria will not be used to disqualify any bidder.

Procedures:

- (1) The policy will be included in all Requests and Calls for coffee issued by the Finance Department, Purchasing and Materials Management Division.
- (2) Also included in all Requests for Quotations issued for coffee by the Finance Department Purchasing and Materials Management Division will be the following statement:

“Bidders to state if coffee that will be supplied is from companies that support sustainable agricultural policies in the coffee sector of producing countries and are involved in programs that make a positive difference in the lives of coffee farmers or has received the Transfair/Fair TradeMark Canada label.

Yes _____ No _____”

- (3) This policy will be considered in the evaluation of all Bids received.

Appendix “G”

CITY OF TORONTO

BY-LAW No. _____

A By-law to Establish Procedures and Authority for the Procurement of Goods and Services and to Repeal Interim Purchasing By-law No. 151-2000.

WHEREAS the Council of the City of Toronto enacted By-law No. 151-2000 as an interim by-law for the procurement of goods and services; and

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:

“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 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;

“Chief Administrative Officer” means the Chief Administrative Officer of the City;

“City” means the City of Toronto;

“Commitment” means a contractual obligation for the purchase of goods, services or construction, including the execution of any document, in compliance with clause 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;

“Council” means the Council of the City;

“Department” means an organizational unit of the City headed by a Department Head;

“Department Head” means any of the commissioners appointed by City Council with administrative responsibility for the 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 in any one instance to procure goods and services directly rather than through the offices of the Purchasing Agent, such amount not to exceed \$5,000 or such increased amount, subject to the Financial Control By-law, as approved by the Chief Administrative Officer in accordance with subsection 5(2);

“Financial Control By-law” means By-law No. 152-2000, 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 City’s Finance Department and whose responsibility it is to supervise and carry out the procurement function on behalf of the City in accordance with 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 standing committee established under the City’s Procedural By-law, By-law No. 23-1998, as amended, or successor by-law;

“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; and

“Treasurer” means the City’s Chief Financial Officer and Treasurer.

2. Applicability

The provisions of this By-law shall apply to all 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 City 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) acting 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 the Department's requirements.

5. Chief Administrative Officer and Department Heads:

- (1) Despite subsection 4(2), the Chief Administrative Officer or a Department Head, or his or her designate, is authorized to make an Award that is:
 - (a) In respect of consulting services where the Commitment resulting from the Award is within the spending authority for such persons under the provisions of the Financial Control By-law; or
 - (b) Within the Departmental Direct Purchase Limit.
- (2) 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.
- (3) The Chief Administrative Officer or a Department Head, or his or her designate, 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).
- (4) When an event occurs that is determined by the Chief Administrative Officer or a Department Head 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 Chief Administrative Officer or Department Head may make such purchases without the involvement of the Purchasing Agent. The Chief Administrative Officer or the Department Head must advise the Purchasing Agent, and in the case of a Department Head advise in addition the Chief Administrative Officer, 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 City 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 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 City official 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 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 \$2 million, 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. Environmental Procurement

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

15. Transition:

- (1) Interim Purchasing By-law No. 151-2000 is repealed.
- (2) Notwithstanding subsection 15(1), the provisions of Interim Purchasing By-law No. 151-2000 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. 2000.

MEL LASTMAN,
Mayor

NOVINA WONG,
City Clerk

(Corporate Seal)

The Administration Committee also submits the following report (February 3, 2000) from the Chief Financial Officer and Treasurer:

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

	Policy	E.Y.	Etob.	Metro	N.Y.	Scar.	Tor.	York	New City Policy Recommended
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	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 and Invitational Tenders from \$20,000 to \$100,000):

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 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 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 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.
- (vi) Final selection of consultant made and authority to award contract is obtained.
- (vii) 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".

(A) Bid Committee:

Currently, there are 4 levels of awarding of contracts:

- (1) the Chief Administrative Officer or designate, up to \$500,000;
- (2) the Bid Committee, up to \$1,000,000;
- (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 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. 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 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 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 No. 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.
- (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:

Lou Pagano, Director, Purchasing and Materials Management Division, Finance Department,
Telephone: 392-7312

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 value of Canadian content of \$7,200 at cost of \$200 (above lowest bid).

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.
- (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:

“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 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 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.
 - (d) 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.
- (4) 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.
- (5) 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

The Administration Committee also submits the following report (April 28, 2000) from the City Solicitor:

Purpose:

To report on the provincial process for the registration of lobbyists under the Lobbyists Registration Act, 1998 including the definitions of categories of lobbyists and how successful the Province has been in dealing with Lobbyists.

Financial Implications and Impact Statement :

There are no financial implications from the adoption of this report.

Recommendation:

It is recommended that this report be received for information.

Background:

The Administration Committee at its meeting held on March 21, 2000, had before it a communication (March 9, 2000) from the City Clerk, advising of Council's actions on February 29, March 1 and 2, 2000 respecting the proposed Purchasing By-law. Among other matters, the Committee:

- (4) requested the appropriate staff to report to the aforementioned meeting of the Administration Committee on the provincial process regarding lobbying as well as how they define a lobbyist, such report to include how successful the Province has been in dealing with lobbyists;

Comments:

Procedures under the Lobbyists Registration Act, 1998:

The Lobbyists Registration Act, 1998 ("Act"), which came into force on January 15, 1999, established a lobbyists registration system for the Province of Ontario. Under the Act paid lobbyists are required to report their "lobbying of public officials" (as defined in the Act) by filing a return with the Registrar, the Integrity Commissioner. The return must be in the required form and may be filed with the Registrar in an electronic form over the internet with no fee payable or by filing a paper copy for which a fee is payable. The register of returns ("registry") is available for public inspection and is also available for review on the internet (lobbyist.oico.on.ca.).

It is an offence to conduct lobbying activities without filing the required return and notice of changes within the specified time limits, to make false or misleading statements in a return or other document, or to knowingly place a public office holder in a position of real or potential conflict of interest. All offences are subject to a maximum fine of \$25,000.

The Act defines three categories of lobbyists as follows:

- (a) consultant lobbyists paid to lobby on behalf of a client, e.g., government relations consultants, lawyers, accountants or other professions who provide lobbying service for their clients ["consultant lobbyist" s. 4(10) of the Act];

- (b) in-house lobbyists employed by persons (including corporations) and partnerships that carry on commercial activities for financial gain [“in-house lobbyist (persons and partnerships)” s. 5(7) of the Act]; and
- (c) in-house lobbyists employed by non-commercial organizations, e.g., advocacy groups and industry, professional and charitable organizations [“in-house lobbyist (organizations)” s. 6(5) of the Act].

Schedule 1 sets out the definitions in the Act that apply to each category of lobbyist.

What is considered “lobbying” can vary with the category of lobbyist. Under the definition of “lobby” in subsection 1(1) of the Act, lobbying occurs when a lobbyist, in any of the three categories of lobbyists, communicates with a public office holder in an attempt to influence:

- (a) the development of any legislative proposal by any member of the Legislative Assembly;
- (b) the introduction, passage, defeat or amendment of any bill or resolution;
- (c) the making or amendment of any regulation;
- (d) the development, amendment or termination of any policy or program;
- (e) any decision about privatization or outsourcing; and
- (f) the awarding of any grant, contribution or other financial benefit by or on behalf of the Crown.

However, in the case of a consultant lobbyist (and not in the case of an in-house lobbyist), lobbying also occurs when a consultant lobbyist communicates with a public office holder in an attempt to influence the awarding of any contract by or on behalf of the Crown, or arranges meetings between a public office holder and any other person.

The registration requirements also vary to some degree for each category of lobbyist. In the case of a consultant lobbyist, the return must be filed by the individual lobbyist within ten days of commencing an undertaking to lobby for a client. Any changes in and the completion or termination of the undertaking must be reported within thirty days. If the undertaking goes on for more than a year, the information in the original undertaking must be confirmed within two months after the year has expired. A return must be filed for each undertaking. The fee for filing a paper copy of the return is \$150.

In the case of an in-house lobbyist (persons and partnerships), if a significant part of an employee's duties is lobbying, the return must be filed by the employee within two months of when the employee met this criteria. The employee must re-register annually within two months of the employer's financial year or, if there is no financial year, the calendar year. The employee must report any changes to the information in the return and if they have ceased to lobby for their

employer or ceased to be employed by that employer within thirty days. The fee for filing a paper copy of the return is \$150.

In the case of an in-house lobbyist (organizations), if the lobbying activities of one or more employees together constitutes a significant part of the duties of one employee, the return must be filed by the senior officer of the organization within two months of commencing lobbying as defined. A new return must be filed within thirty days after expiration of each six months period after the filing of the original return. This return must advise if any employee listed in the last return is no longer an in-house lobbyist. The fee for filing a paper copy of the return is \$75 for each in-house lobbyist employed by the organization when the return is filed.

The information that must be disclosed in the returns includes the following:

- (a) basic information on the individual lobbyists, the senior officer and the client or employer: name, address and the nature of the business or activities;
- (b) information on other parties who have an interest in (e.g., a subsidiary or parent corporation) or who support the lobbying activity by contributing at least \$750;
- (c) information on financial matters: government subsidies to the client or employer, and contingency fees for the services of a consultant lobbyist;
- (d) information on the nature of the lobbying activity or proposed activity including the following:
 - (i) the subject matter of lobbying and, if an in-house lobbyist (organizations), the subject matter during the six months period of a return and the expected subject matter for the next six months;
 - (ii) specific information on the undertaking, e.g., the proposed bill or program;
 - (iii) the ministry, agency, etc. they have lobbied or expect to lobby;
 - (iv) MPPs or MPP staff they have lobbied or expect to lobby;
 - (v) the communication techniques to be used, including “grass- roots communication” (as defined in the Act).

Provincial success in dealing with lobbyists:

Staff of the Lobbyists Registration Office are in the process of preparing the first report on the registration system for the 15 month period of January 1999 to and including March 2000. This report is expected to be released sometime in June. In the interim, they have provided the attached information in Schedule 2 on the number and types of registration during that period. As a result of technical difficulties they were unable to provide the number of hits to the website.

The Executive Administration Officer and Delegated Registrar (“EAO”) has advised that in her opinion the registration system has generally been successful in achieving its objectives of providing public access to lobbying activities and making government more transparent. As the system is operated on-line, there has not been a great deal of public feedback. The EAO also advised that many of the calls to her office from members of the public deal with questions as to why certain groups are not listed on the registry. (In most of these cases, the callers were simply unaware that the person or organization qualified for an exemption under the Act.)

The EAO advised that Provincial staff, who primarily use the system to ensure that persons or organizations with whom they are meeting or corresponding are registered, have offered favourable comments on the system. Although it was not one of the stated objectives of the registration system, the registry is frequently being used by lobbyists themselves to determine who their opponents and allies are on a particular issue.

There have been no prosecutions under the Act to date. The Lobbyists Registration Office is doing very little policing of the system. The Office relies on provincial staff to advise the Office if a lobbyist has failed to register. Office staff then contact the person to advise of the registration requirements.

Conclusions:

From this report it can be concluded that the provincial system has resulted in certain paid lobbyists registering information on their lobbying activities as required under the Act and that this information is accessible for public review.

Contact:

Christina M. Cameron, Lawyer,
Telephone: 392-7235, Fax: 392-1017, E-mail: ccameron@city.toronto.on.ca

List of Attachments:

Schedule 1 Definitions of Lobbyists under the Lobbyists Registration Act, 1998
Schedule 2 Lobbyists Registration Act, 1998, Statistics as of March 31, 2000 (from January 1999 to March 2000)

Schedule 1

Definitions of Lobbyists under the Lobbyists Registration Act, 1998

Lobbyists:

(1) “Consultant lobbyist” is defined in subsection 4(10) of the Act as follows:

(10) In this section,

“client” means a person, partnership or organization on whose behalf a consultant lobbyist undertakes to lobby;

“consultant lobbyist” means an individual who, for payment, undertakes to lobby on behalf of a client;

“payment” means money or anything of value and a contract, promise or agreement to pay money or anything of value;

“undertaking” means an undertaking by a consultant lobbyist to lobby on behalf of a client.

(2) “In-house lobbyist” (persons and partnerships) is defined in subsection 5(7) of the Act as follows:

(7) In this section,

“employee” includes an officer who is compensated for the performance of his or her duties;

“in-house lobbyist” means an individual (other than one described in subsection (8)) who is employed by a person or partnership, a significant part of whose duties as an employee, as determined in accordance with the regulations, is to lobby on behalf of the employer or, if the employer is a corporation, on behalf of any subsidiary of the employer or any corporation of which the employer is a subsidiary;

“person” does not include a corporation referred to in clause (f) of the definition of

“organization” in subsection 1(1).

Related definitions:

Subsection 7(8) of the Act:

(8) The following individuals are not in-house lobbyists:

- (1) Officers of the Assembly who are appointed on the address of the Assembly and the individuals employed in the office of such officers.
- (2) Public servants within the meaning of the Public Service Act.
- (3) Such other classes of employees of Crown agencies as may be prescribed.

Clause 1(1)(f) of the definition of “organization” in the Act:

“organization” means:

- (f) a corporation without share capital incorporated to pursue, without financial gain to its members, objects of a national, provincial, territorial, patriotic, religious, philanthropic, charitable, educational, agricultural, scientific, artistic, social, professional, fraternal, sporting or athletic character or other similar objects;

Section 5 of Ontario Regulation 722/98 respecting “a significant part of an employees duties:

5.
 - (1) This section applies with respect to the definition of “in-house lobbyist” in subsection 5(7) of the Act.
 - (2) If an employee spends at least 20 per cent of his or her time at work engaged in the lobbying activities described in the definition, those activities are considered to be a significant part of the employee's duties.
 - (3) The percentage is to be determined with reference to the employee's activities during a three-month period.
3. “In-house lobbyist” (organizations) is defined in subsection 6(5) of the Act as follows:
 - (5) In this section,

“employee” includes an officer who is compensated for the performance of his or her duties;

“in-house lobbyist” means an individual who is employed by an organization,

 - (a) a significant part of whose duties as an employee, as determined in accordance with the regulations, is to lobby on behalf of the organization, or
 - (b) a part of whose duties as an employee is to lobby on behalf of the organization if his or her duties to lobby together with the duties of other employees to lobby would constitute a significant part of the duties of one employee, as determined in accordance with the regulations, were those duties to lobby to be performed by only one employee;

“senior officer” means the most senior officer of an organization who is compensated for the performance of his or her duties.

Related definition in section 6 of Ontario Regulation 722/98 respecting “a significant part of an employees duties:

6. (1) This section applies with respect to the definition of “in-house lobbyist” in subsection 6(5) of the Act.
- (2) For the purposes of clause (a) of the definition, if an employee spends at least 20 per cent of his or her time at work lobbying on behalf of the organization, the lobbying is considered to be a significant part of the employee’s duties.
- (3) For the purposes of clause (b) of the definition, if the lobbying activities of all employees on behalf of the organization constitute at least 20 per cent of the time at work of one full-time employee, those activities are considered to be a significant part of one employee's duties.
- (4) The percentage in subsection (2) or (3) is to be determined with reference to the employee’s activities, or the employees' activities, during a three-month period.

Schedule 2

Lobbyists Registration Act, 1998

Statistics as of March 31, 2000 (from January 1999 to March 2000)

	Consultants	Persons and Partnerships	Organizations	Total
Active Registry				
Lobbyists Registrations	188	78	95	361
Terminations Registrations	511	78	95	684
Terminations Registrations	286	3	8	297

The Administration Committee reports, for the information of Council, having also had before it a communication (March 21, 2000) from the City Clerk advising that the Administration Committee on March 21, 2000, during its consideration of the Purchasing Policies By-law, amongst other things, deferred consideration of the following motion until such time as the matter is again being considered by the Committee:

Moved by Councillor Holyday:

“That the Committee recommend to Council that the Section pertaining to Departmental Direct Purchase Limit contained in Appendix B embodied in the report (February 3, 2000) from the Chief Financial Officer and Treasurer 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 \$5,000.00 or such increased amount as approved by the Chief Administrative Officer in accordance with subsection 5.(2);”.

The following persons appeared before the Administration Committee in connection with the foregoing matter:

- Mr. Ivan Fleischmann, Miller Thomson;
- Mr. Bruce Davis, Executive Vice President, Urban Intelligence; and
- Councillor Bill Saundercook, York Humber.

(City Council on July 4, 5 and 6, 2000, had before it, during consideration of the foregoing Clause, a communication (June 21, 2000) from Mr. Salvatore Morra, P. Eng., Executive Director, Greater Toronto Sewer and Watermain Contractors Association, expressing the Association’s support for the recommended amendments to the Purchasing By-law.)