

Authority: General Government Committee Item GG8.21,  
adopted as amended by City of Toronto Council on  
December 13, 14 and 15, 2023

## **CITY OF TORONTO**

### **Bill 227**

### **BY-LAW -2024**

#### **To amend City of Toronto Municipal Code Chapter 195, Purchasing.**

Whereas subsection 212(1) of the City of Toronto Act, 2006 requires that the City adopt and maintain policies with respect to its procurement of goods and services and the delegation of its powers and duties;

Whereas City Council wishes to amend City of Toronto Municipal Code Chapter 195, Purchasing, to reflect a comprehensive five (5) year review of this chapter that reflects a change the chapter name, modification and addition of definitions, an increase to the value of limited solicitations, extended authority to cancel procurements, additional consultation and negotiation responsibilities and administrative and housekeeping amendments;

The Council of the City of Toronto enacts:

1. Chapter 195, Purchasing, of The City of Toronto Municipal Code is amended as follows:
  - a. By deleting the title Purchasing and replacing it with the title Procurement throughout the Chapter.
  - b. By deleting the uncapitalized “chapter” and replacing it with capitalized Chapter throughout the Chapter.
  - c. By deleting the use of “designates” and “designated” and replacing it with “delegates” and “delegated” as appropriate throughout the Chapter.
  - d. By deleting the following definitions in Section 195-2.1. Definitions:

ACCOUNTABILITY - The Auditor General, Integrity Commissioner, Lobbyist Registrar or Ombudsman appointed by Council under Part V, Accountability and Transparency, of the City of Toronto Act, 2006.

AWARD – The formal acceptance of a bid that results in a contract.

BEST VALUE - The optimal balance of performance and cost determined in accordance with pre-determined evaluation criteria disclosed in a solicitation for the purpose of making an award. For competitive procurements best value is represented by the highest ranked bid, which may include, for request for tenders and request for quotations, the lowest cost bid meeting technical specifications and supplier qualifications.

BID AWARD PANEL - The bid award panel established under Article 5.

CO-OPERATIVE PURCHASING - A competitive procurement process that is conducted by one public body or buying group on behalf of one or more public bodies in order to obtain the benefits of volume purchases and administrative efficiency.

EVALUATION CRITERIA – The rated criteria set out in a notice of intended procurement or solicitation which may include but is not limited to supplier qualifications, price and other cost or value factors, quality, technical merit, environmental characteristics, and negotiable commercial terms such as terms of delivery.

FUNDING APPROVAL -

A. In relation to a capital project as defined in Chapter 71, Financial Control:

Inclusion of the capital project in a capital budget approved by Council and where the Chief Financial Officer and Treasurer<sup>1</sup> provides written confirmation that he or she is satisfied that:

- (1) The entire capital expenditure for the capital project is identified in the budget at an appropriate capital project or subproject level; and
- (2) The capital project's cash flow funding is available in an appropriate account.

B. In relation to other than a capital project:

- (1) Funding approval of the relevant operating program by the Council adoption of interim or final operating budgets and where the Chief Financial Officer and Treasurer provides written confirmation that he or she is satisfied that the funding of the contract, or the first year of a multi-year contract, is available in an appropriate account; or
- (2) In a situation where Council has not yet adopted an interim or final operating budget:
  - (a) The written confirmation of a division head that the contract is in respect of necessary current and ongoing division operations and that the subject matter of the contract was contained in a program that had funding approval in the prior year; and
  - (b) The written confirmation of the Chief Financial Officer and Treasurer that the funding of the contract can be undertaken to his or her satisfaction.

GOODS – Moveable property (including the costs of installing, operating, maintaining or manufacturing, such moveable property) and includes raw materials, products, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a general construction contract.

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**LIMITED SOLICITATION** - A competitive or non-competitive solicitation method where one or more suppliers of the City's choice are invited and given an equal opportunity to bid to the solicitation.

**MAJOR IRREGULARITY** - A deviation from the requirements in a solicitation which:

- A. Affects the substance, as opposed to the form, of a bid in terms of the price, quality, quantity or delivery and is material to the award; or
- B. Could provide a supplier who has submitted a request with an unfair advantage over competitors; and
- C. May include, but is not limited to, a late submission, unclear or materially unbalanced pricing information, inadequate amount or terms of bid security, and any other matter identified as materially warranting rejection in the solicitation issued by the City.

**MINOR IRREGULARITY** - A deviation from the requirements in a solicitation which:

- A. Affects the form as opposed to the substance of a bid response in terms of the price, quality, quantity or delivery and is not material to the award; and
- B. Could not provide a supplier who has submitted a bid with an unfair advantage over competitors; and
- C. Any other matter identified as being subject to clarification or rectification in the solicitation issued by the City.

**NOTICE OF INTENDED PROCUREMENT** - A written notice published by the City, inviting interested suppliers to submit a bid in response to a solicitation.

**OPEN COMPETITIVE PROCUREMENT** - A competitive solicitation method, where a notice of intended procurement is advertised to the public, giving all suppliers an equal opportunity to bid to the solicitation and prove their qualifications.

**PRE-QUALIFIED SUPPLIER** - A supplier who has submitted a response to an advertised request for pre-qualifications and has been determined to have met the minimum disclosed standards for technical qualifications and professional competence, and has the necessary equipment, facilities and experience for specific future solicitations.

**PROCUREMENT** - The acquisition of goods and/or services by any contractual means, including purchase, rental, lease or conditional sale.

**PROCUREMENT PROCESS** – The process that begins after the City has decided on its requirement and continues through to and including contract award and execution.

**PROJECT LEAD** - The employee in a division that has been assigned the responsibility by the division head for the procurement of goods and/or services and the management of the resulting contract with a supplier.

PUBLIC OFFICE HOLDER - Has the meaning provided in section 156 of the City of Toronto Act, 2006, and includes:

- A. A member of Council and any person on his or her staff;
- B. An officer or employee of the City;
- C. A member of a local board (restricted definition) of the City and any person on his or her staff;
- D. An officer, director or employee of a local board (restricted definition) of the City; and
- E. Such other persons as may be determined by Council who are appointed to any office or body by Council or by a local board (restricted definition) of the City.

REQUEST FOR EXPRESSION OF INTEREST (REOI) - A solicitation method used to gather information on future supplier interest in an opportunity; or, information on supplier capabilities or qualifications for the purpose of better planning the supplier qualification requirements of a future solicitation that may result in an award.

REQUEST FOR INFORMATION (RFI) - A solicitation issued to potential future suppliers to gather general supplier, service or product information. It is a procurement procedure where suppliers are provided with a general or preliminary description of a problem or need and are requested to provide information or advice about how to better define the problem or need, or alternative solutions and costs, for the purpose of better planning the technical specification requirements of a future solicitation that may result in an award.

REQUEST FOR PROPOSALS (RFP) - A solicitation issued to obtain bids or proposals where a procurement need is identified, but how it will be achieved is unknown at the outset, which allows suppliers to propose solutions or delivery methods to arrive at the desired result. The evaluation criteria to determine best value may include more than price factors and the solicitation may allow for consecutive or concurrent negotiations to be conducted with suppliers on any of the contract terms including, but not limited to, the technical specifications, commercial terms and/or prices following the process outlined in the solicitation.

REQUEST FOR QUOTATIONS (RFQ) - A solicitation issued to obtain competitive bids for standard goods and/or services where the City has pre-determined the required quantity and/or quality of the goods or services and the evaluation criteria to determine the best value is generally the lowest cost bid meeting technical specifications without any material contract negotiations.

REQUEST FOR SUPPLIER QUALIFICATIONS (RFSQ) - A solicitation that is issued to gather submission information on supplier capabilities and qualifications

with the intention of creating a list of pre-qualified suppliers for future selective solicitations, including:

- A. A one-time future solicitation; or
- B. A multi-use list for solicitations of a predefined scope and duration.

**REQUEST FOR TENDERS (RFT)** - A solicitation that is generally issued in order to obtain irrevocable competitive bids for standard construction services where the City has pre-determined the required scope of work including quantity and/or quality requirements, and the evaluation criteria to determine the best value is generally the lowest cost bid meeting technical specifications without any material contract negotiations.

**SELECTIVE SOLICITATION** - An open competitive solicitation method where suppliers are first prequalified through a request for supplier prequalification and then only pre-qualified suppliers are invited to bid.

**SERVICES** - All services, including construction services, unless otherwise specified.

**SOLICITATION** - A written notice to suppliers, whether or not it is publically advertised or intended to result in a contract, and includes a:

- A. Request for expressions of interest (REOI);
- B. Request for information (RFI);
- C. Request for supplier prequalification (RFSQ);
- D. Request for proposals (RFP);
- E. Request for quotations (RFQ); and
- F. Request for tenders (RFT).

**SUSPENDED SUPPLIER** - A supplier that has been suspended for any duration from bidding on future solicitations under § 195-13.14.

**TECHNICAL SPECIFICATION** – A solicitation requirement that:

- A. Lays down the characteristics of a good or a service to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or
- B. Addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or a service.

**VALUE or PROCUREMENT VALUE** - The estimated maximum total value of the procurement over its entire duration, taking into account all forms of remuneration, including:

- A. Premiums, fees, commissions and interest; and
  - B. Where the solicitation provides for the possibility of options, the total value of such options.
- e. By adding the following definitions alphabetically in the appropriate place to Section 195-2.1. Definitions:

ACCOUNTABILITY OFFICER - The Auditor General, Integrity Commissioner, Lobbyist Registrar or Ombudsman appointed by Council under Part V, Accountability and Transparency, of the City of Toronto Act, 2006.

AWARD - The formal authorization to proceed with the purchase of goods or services or both from a supplier who has been selected in accordance with this Chapter.

BEST AND FINAL OFFER (BAFO) – A process that may be used in a Negotiated Request for Proposals to allow Suppliers to provide a final offer that contains the Supplier’s most favourable terms regarding, without limitation, price, services, and products to be delivered.

BEST VALUE - The optimal balance of performance and cost determined in accordance with pre-determined evaluation criteria disclosed in a solicitation for the purpose of making an award. For competitive procurements best value is represented by the highest ranked bid, which may include, for request for proposals the highest scoring bid, and for request for tenders and request for quotations, the lowest cost bid meeting technical specifications and supplier qualifications.

BID AWARD PANEL - The Bid Award Panel established under Article 5.

CITY SOLICITOR – The person with full charge and control for the conduct of the Legal Services Division of the City.

CLOUD SERVICES – Any engagement which will entail third party storage, access or processing of City data or technology systems, or the City data or technology system will reside in the custody, care and control of a third party. These services are typically delivered to the City through the internet.

CO-OPERATIVE PURCHASING - A competitive procurement that is conducted by one public body or buying group on behalf of one or more public bodies in order to obtain the benefits of volume purchases and administrative efficiency.

EVALUATION CRITERIA - The criteria set out in a notice of intended procurement or solicitation which may include but are not limited to supplier qualifications, price and other cost or value factors, quality, technical merit, environmental characteristics, and negotiable commercial terms such as terms of delivery.

**FUNDING APPROVAL -**

A. In relation to a capital project as defined in Chapter 71, Financial Control:

Inclusion of the capital project in a capital budget approved by Council and where the Chief Financial Officer and Treasurer provides written confirmation that they are satisfied that:

- (1) The entire capital expenditure for the capital project is identified in the budget at an appropriate capital project or subproject level; and
- (2) The capital project's cash flow funding is available in an appropriate account.

B. In relation to any project other than a capital project:

- (1) Funding approval of the relevant operating program by Council adoption of interim or final operating budgets and where the Chief Financial Officer and Treasurer provides written confirmation that they are satisfied that the funding of the contract, or the first year of a multi-year contract, is available in an appropriate account; or
- (2) In a situation where Council has not yet adopted an interim or final operating budget:
  - (a) The written confirmation of a division head that the contract is in respect of necessary current and ongoing division operations and that the subject matter of the contract was contained in a program that had funding approval in the prior year; and
  - (b) The written confirmation of the Chief Financial Officer and Treasurer that the funding of the contract can be undertaken to their satisfaction.

**GOODS** – All moveable, tangible, and intangible properties (including the costs of installing, operating, maintaining, manufacturing, or disposing of such properties), which includes raw materials, products, data, equipment, software and software licenses, and other physical and non-physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a general construction service contract.

**LIMITED SOLICITATION** - A competitive or non-competitive solicitation method where one or more suppliers of the City's choice are invited and given an equal opportunity to bid on the solicitation.

**MAJOR IRREGULARITY** - A deviation from the requirements in a solicitation which:

- A. Affects the substance, as opposed to the form, of a bid in terms of the price, quality, quantity or delivery and is material to the award; or
- B. Could provide a supplier who has submitted a request with an unfair advantage over competitors; and
- C. May include, but is not limited to, a late bid, unclear or materially unbalanced pricing information, inadequate amount or terms of bid security, and any other matter identified as materially warranting rejection in the solicitation issued by the City.

**MINOR IRREGULARITY** - A deviation from the requirements in a solicitation which:

- A. Affects the form as opposed to the substance of a bid in terms of the price, quality, quantity or delivery and is not material to the award; and
- B. Could not provide a supplier who has submitted a bid with an unfair advantage over competitors; and
- C. Any other matter identified as being subject to clarification or rectification in the solicitation issued by the City.

**NEGOTIATED REQUEST FOR PROPOSALS (nRFP)** – A solicitation issued to obtain bids where a procurement need is identified, but how it will be achieved may be unknown at the outset, which allows suppliers to propose solutions or delivery methods to arrive at the desired result. This procurement process may allow for consecutive or concurrent negotiations to be conducted with suppliers on any of the contract terms including, but not limited to, the technical specifications, commercial terms and prices following the process outlined in the solicitation. An nRFP may or may not include a best and final offer process.

**NOTICE OF INTENDED PROCUREMENT (NOIP)** - A written notice published by the City at the beginning of a competitive procurement, inviting interested suppliers to bid.

**OPEN COMPETITIVE PROCUREMENT** - A competitive solicitation method, where a notice of intended procurement is advertised to the public, giving all suppliers an equal opportunity to bid on the solicitation and prove their qualifications.

**PRE-QUALIFIED SUPPLIER** - A supplier who has submitted a response to an advertised request for supplier qualifications and has been determined to have met the minimum disclosed standards. Pre-qualified suppliers may be invited to bid on specific future solicitations for which they have been pre-qualified.

**PROCUREMENT** - The acquisition of goods or services or both by any



contractual means, including purchase, rental, lease or conditional sale.

**PROCUREMENT PROCESS** – A process related to the acquisition of goods or services or both that begins after the City has decided on its requirement and continues through to and including award and contract execution.

**PROJECT LEAD** - The employee in a division that has been assigned the responsibility by the division head for the procurement of goods or services or both and the management of the resulting contract with a supplier.

**PUBLIC OFFICE HOLDER** - Has the meaning provided in section 156 of the City of Toronto Act, 2006, and includes:

- A. A member of Council and any person on their staff;
- B. An officer or employee of the City;
- C. A member of a local board (restricted definition) of the City and any person on their staff;
- D. An officer, director or employee of a local board (restricted definition) of the City; and
- E. Such other persons as may be determined by Council who are appointed to any office or body by Council or by a local board (restricted definition) of the City.

**REQUEST FOR EXPRESSION OF INTEREST (REOI)** - A solicitation used to gather information on future supplier interest in an opportunity or information on supplier capabilities or qualifications for the purpose of better planning the supplier qualification requirements of a future solicitation that may result in an award. A response to an RFOI will not pre-qualify any potential supplier and will not result in an award.

**REQUEST FOR INFORMATION (RFI)** - A solicitation used to gather general supplier, service or product information. It is a solicitation whereby suppliers are provided with a general or preliminary description of a problem or need and are requested to provide information or advice about how to better define the problem or need, or alternative solutions and costs, for the purpose of better planning the technical specification requirements of a future solicitation that may result in an award. A response to an RFI will not pre-qualify any potential supplier and will not result in an award.

**REQUEST FOR PROPOSALS (RFP)** - A solicitation issued to obtain bids or proposals where a procurement need is identified, but how it will be achieved is unknown at the outset, which allows suppliers to propose solutions to arrive at the desired result.

REQUEST FOR QUOTATIONS (RFQ) - A solicitation issued in order to obtain irrevocable bids for standard goods or services or both goods and services where the City has pre-determined the required quantity or quality or both quantity and quality of the goods or services.

REQUEST FOR SUPPLIER QUALIFICATIONS (RFSQ) - A solicitation that is issued to gather information on supplier capabilities and qualifications with the intention of creating a list of pre-qualified suppliers for future selective solicitations, including:

- A. A one-time future solicitation; or
- B. A multi-use list for solicitations of a predefined scope and duration.

REQUEST FOR TENDERS (RFT) - A solicitation that is generally issued in order to obtain irrevocable bids for standard construction services where the City has pre-determined the required scope of work including quantity or quality requirements or both quantity and quality requirements.

SELECTIVE SOLICITATION - An open competitive solicitation method where suppliers are first prequalified through a request for supplier qualifications and then only pre-qualified suppliers are invited to bid.

SERVICES - All services, including professional, consulting, maintenance, construction services or cloud services, unless otherwise specified.

SOLICITATION - A written notice to suppliers, whether or not it is publicly advertised or intended to result in a contract, and includes a:

- A. Request for expression of interest (REOI);
- B. Request for information (RFI);
- C. Request for supplier qualifications (RFSQ);
- D. Request for proposals (RFP);
- E. Request for quotations (RFQ);
- F. Request for tenders (RFT); and
- G. Negotiated request for proposals (nRFP).

SUSPENDED SUPPLIER - A supplier that has been suspended, deemed ineligible, prohibited or disqualified for non-compliance with the Supplier Code of Conduct for any duration from bidding on future procurements under § 195-13.14.

TECHNICAL SPECIFICATION – A procurement requirement that:

- A. Lays down the characteristics of a good or a service to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or
- B. Addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or a service.

VALUE or PROCUREMENT VALUE - The estimated maximum total value of the procurement over its entire duration, including option periods, which takes into account all forms of remuneration, including:

- A. Premiums, fees, commissions and interest; and
  - B. Where there is a possibility of optional goods or services or both, the total value of such options.
- f. By deleting Subsection 195-2.3 and replacing it with the following:

**§ 195-2.3. Application - general.**

All goods and services required by the City shall be acquired and disposed of in accordance with the provisions of this Chapter, the procurement policies and the procurement procedures.

- g. By deleting Subsection 195-2.5 and replacing it with the following:

**§ 195-2.5. Exemptions.**

This Chapter does not apply to:

- A. The acquisition or rental of land, existing buildings or other immovable property or other related real estate rights;
- B. City employment contracts;
- C. Any form of assistance that the City provides, including co-operative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;
- D. Procurement between the City and another public body;
- E. Procurement by the City on behalf of another person where the procurement would not be covered by this Chapter if it were conducted by the other person itself;
- F. The procurement or acquisition of services related to the sale, redemption and distribution of the City's public debt or contracts relating to the issue,

purchase, sale or transfer of securities or other financial instruments; or

G. Those other items listed in Schedule A of Chapter 71, Financial Control.

h. By deleting Subsection 195-3.1 and replacing it with the following:

**§ 195-3.1. General duties and responsibilities.**

The Chief Procurement Officer shall have the authority and responsibility, subject to Council policies, for the following:

- A. Approving and prescribing procurement policies and procurement procedures not specifically provided for in this Chapter, in consultation with division heads and the City Solicitor;
- B. Coordinating procurement processes and solicitations on behalf of the City, except for:
  - (1) Competitive procurements valued up to \$120,000 undertaken by divisions in compliance with procurement policies and procedures;
  - (2) Non-competitive procurements valued up to \$50,000 undertaken by divisions in compliance with procurement policies and procedures;
  - (3) Non-competitive procurements in an emergency that would not reasonably permit a competitive procurement;
  - (4) Procurements undertaken by an Accountability Officer for the purpose of carrying out their independent statutory functions in confidence; or
  - (5) Those goods and services listed in Schedule A of Chapter 71, Financial Control.
- C. Determining the appropriate procurement process by which all goods and services shall be procured on behalf of the City;
- D. Establishing templates for common or repetitive solicitations;
- E. Administering solicitations, up to finalization of a contract, including:
  - (1) Receipt, custody and security of all bids and specified evaluation documentation;

- (2) Rejecting bids made by ineligible and suspended suppliers, or that are otherwise in contravention of this Chapter or Council policy regarding supplier eligibility and conduct;
  - (3) Assessing compliance with mandatory requirements by determining whether irregularities are major or minor and rejecting bids with major irregularities;
  - (4) Overseeing the evaluation of bids;
  - (5) Communicating with suppliers after issuance of a solicitation up to the finalization of an award;
  - (6) Otherwise managing the remainder of the procurement process through to award and final contract execution or purchase order issuance;
  - (7) Identifying the value for which notices of intended procurement are required to be posted on the City's Electronic Tendering System;
  - (8) Determining what other notices (if any) need to be advertised and to whom;
- F. Overseeing the disposition of goods which have been declared surplus by the relevant division head;
- G. Developing co-operative purchasing plans with other public bodies;
- H. Compiling and maintaining a collection of all policies adopted by Council from time to time affecting the procurement process;
- I. Providing information to suppliers in relation to this Chapter, procurement policies, procurement procedures and related templates, tools, systems and practices;
- J. Providing appropriate and relevant training for any division staff responsible for or involved in the procurement process;
- K. Providing professional advice and guidance on the procurement process, including strategic advice in relation to planning an appropriate procurement process and developing rated or other relevant evaluation criteria or related supplier performance and contract implementation;
- L. Reporting to the Bid Award Panel on all solicitations where the Bid Award Panel has authority to make an award;
- M. Providing advice and support to the Bid Award Panel;
- N. Reporting on, along with the division head that initiated the solicitation, all awards not subject to approval by the Bid Award Panel to the appropriate Standing Committee;
- O. Reporting to suppliers and the public on the award of procurements valued over \$133,800, including any essential information as may be prescribed;
- P. Maintaining and publishing a list of ineligible and suspended suppliers;

- Q. Generally monitoring, supervising and reporting to the appropriate Standing Committee, as required, on the procurement process;
  - R. Undertaking a comprehensive review of this Chapter and all policies affecting the procurement process every five (5) years;
  - S. Delegating to any or all division heads any aspect of the procurement process as the Chief Procurement Officer may deem reasonable; and
  - T. Appointing the appropriate delegates for the application of this Chapter, procurement policies and procurement procedures.
- i. By deleting Subsection 195-4.1 and replacing it with the following:

**§ 195-4.1. Division head responsibilities.**

Division heads or their delegate(s) shall be responsible for:

- A. Ensuring division staff involved in procurement receive appropriate training;
- B. Advising the Chief Procurement Officer of divisional procurement plans and specific upcoming procurements and allowing sufficient time to complete the procurement as may be stipulated in the procurement policies or procurement procedures;
- C. Participating in the development of template specifications, quality requirements, scope of work and other requirements including contract documentation for routine procurements conducted by their division;
- D. Ensuring that competitive procurements including limited solicitations valued up to \$120,000 and non-competitive procurements valued up to \$50,000 or non-competitive procurements in an emergency made by division staff are made in compliance with the requirements of this Chapter and Chapter 71, Financial Control and all applicable procurement policies and procurement procedures;
- E. Ensuring that goods and services are legitimately required for City purposes prior to the issuance of any solicitation;
- F. Ensuring that all technical specifications and requirements can be justified on the basis of a legitimate business objective and do not unfairly discriminate against any potential supplier;
- G. Directing and overseeing the negotiation, execution and management of all contracts led by or coordinated by their division including, without limitation, the verification that payments are made only for deliverables properly received, timelines are met, approving, or obtaining necessary approvals, the approval of subcontracting, assignment, amendment,

optional renewal, early termination, enforcement of warranty and performance security, insurance, indemnification, limits on liability including any caps to liability, and adoption of related divisional contract management procedures in consultation with the City Solicitor;

- H. Considering short and long-term requirements with respect to quantities and timelines or total project costs;
  - I. Considering the cost of ongoing maintenance, support and licensing and other requirements;
  - J. Consulting with the Technology Services Division and the Office of the Chief Information Security Officer of the City if the goods or services, or part thereof, includes any technology goods or services, or will potentially have implications for the City's technology and digital environment, to ensure appropriate oversight, due diligence, risk management and alignment with technology standards;
  - K. Appointing the appropriate sub-delegates for the application of this Chapter, procurement policies and procurement procedures;
  - L. Consulting with the Insurance and Risk Management Division of the City to ensure that the insurance provisions within the form of contract appropriately reflect a risk assessment in line with the goods and services being procured; and
  - M. Selection of an appropriate division project lead.
- j. By deleting Subsection 195-4.2 and replacing it with the following:

**§ 195-4.2. Division project lead responsibilities.**

Project leads shall be responsible for:

- A. Preparing technical specifications, quantity requirements and scope of work for solicitations;
- B. Identifying areas for continuous improvement in template documents in relation to non-routine procurements in order for appropriate terms and conditions to be developed by the Chief Procurement Officer in consultation with the Insurance and Risk Management Division and the City Solicitor;
- C. Ensuring that suppliers, and their goods and services, conform with contract terms, conditions and technical specifications when the goods and services are first received and throughout the term of a contract; and
- D. Managing all contracts assigned by the division head, including, without limitation, the verification that payments are made only for deliverables

properly received and timelines are met, approving, or obtaining necessary approvals, for such actions as subcontracting, assignment, amendment, optional renewal, early termination, and the enforcement of warranty and performance security in accordance with divisional contract management procedures and in consultation with the City Solicitor.

- k. By deleting Subsection 195-6.1 and replacing it with the following:

**§ 195-6.1. Information gathering.**

Prior to conducting a competitive procurement, the following solicitations may be issued for the purpose of gathering information:

- A. A request for information (RFI); or
- B. A request for expression of interest (REOI).

The receipt of a submission in response to a request for information or request for expression of interest does not create a legal contract.

- l. By deleting the word pre-qualification and replacing it with qualification in the opening sentence of Subsection 195-6.2.
- m. By deleting Subsection 195-6.3 and replacing it with the following:

**§ 195-6.3. Competitive solicitations.**

A competitive solicitation method must be used for any procurement, unless one or more of the exceptions for using a non-competitive procurement described in this Chapter exist. Competitive solicitations include, but are not limited to the following:

- A. Request for tenders (RFT);
- B. Request for quotations (RFQ);
- C. Request for proposals (RFP);
- D. Negotiated request for proposals (nRFP);
- E. Request for supplier qualifications (RFSQ); and
- F. Any multi-stage procurement involving a combination of these competitive solicitation methods.

- n. By deleting Subsection 195-6.4 and replacing it with the following:

**§ 195-6.4. Notice of intended procurement.**



A notice of intended procurement must be published on an electronic tendering system easily accessible to suppliers of the City for the following solicitations:

- A. Procurements valued over \$133,800; or
  - B. A request for supplier qualifications for selective solicitations.
- o. By deleting Subsection 195-6.5 and replacing it with the following:

**§ 195-6.5. Co-operative purchasing.**

The Chief Procurement Officer may make arrangements with one or more public bodies for co-operative purchasing where there are economic advantages in so doing, provided that if the procurement is to be conducted by other public bodies, the Chief Procurement Officer determines that:

- A. The method of procurement used by the other public body is a competitive method consistent with that described in this Chapter; and
- B. The awarding, reporting and execution of contracts resulting from the co-operative purchasing is in accordance with the requirements of this by-law and the procurement procedures.

Such procurements shall be conducted and contracts executed in accordance with the applicable authority for competitive procurements as set out in this Chapter and in Chapter 71, Financial Control.

- p. By deleting Subsection 195-6.6 and replacing it with the following:

**§ 195-6.6. Procurement of same goods and services as public body.**

Notwithstanding any other provision of this Chapter, a procurement may be made directly from a supplier of another public body, if the Chief Procurement Officer determines that the public body followed a competitive method consistent with that described in this Chapter, and the following additional conditions exist:

- A. The resulting contract between the public body and the supplier stipulates that the same goods or services or both be made available to other public bodies which include the City at the same price as provided by the supplier to the initiating public body;
- B. The same goods or services or both will be made available to the City for the same or better price than the price that is to be paid by the public body;
- C. The purchase of goods or services or both by the City is within funding approval; and

- D. The supplier is not ineligible, suspended or otherwise in contravention of this Chapter.

The award and contract execution in relation to a procurement made by another public body shall otherwise be in accordance with the authorities applicable to a competitive solicitation as set out in this Chapter and in Chapter 71, Financial Control.

- q. By deleting Subsection 195-7 and replacing it with the following:

**ARTICLE 7**

**Non-competitive procurement or limited solicitations**

**§ 195-7.1. Non-competitive procurement exceptions.**

A non-competitive procurement may be undertaken where both the proposed non-competitive procurement and the particular supplier can be justified in good faith, based on one or more of the following:

- A. A statutory or market-based monopoly;
- B. An absence of competition in the market for technical reasons;
- C. The existence of exclusive rights such as patent, copyright, license or warranty restrictions;
- D. Procurement of a work of art;
- E. Additional deliveries by an original supplier of goods and services that were not included in the original procurement, but a change of supplier cannot be made for economic or technical reasons without causing significant inconvenience or substantial duplication of costs for the City;
- F. An attempt to procure the required goods or services by soliciting competitive bids has been made in good faith, but has failed to identify a compliant bid or qualified supplier, or where the bids received have been collusive;
- G. The goods or services are required as a result of an emergency which would not reasonably permit the solicitation of competitive bids;
- H. Construction, renovations, repairs or maintenance in respect of real estate leased or occupied by the City which may only be conducted by another person in accordance with a real estate agreement;
- I. The goods or services are purchased under circumstances which are exceptionally advantageous to the City, such as in the case of a bankruptcy or receivership;

- J. It is advantageous to the City to acquire the goods or services from another public body;
- K. Another organization is funding, or substantially funding, the procurement and the City has determined that the supplier and the terms and conditions of the proposed contract are beneficial to the City;
- L. The procurement of a particular brand of goods or services that are intended solely for resale to the public and no other brand meets the City's program objectives nor is the brand available from any other source;
- M. A contract to be awarded to the winner of a design contest, provided that:
  - (1) The contest is organized in a manner that is consistent with the principle of fair competition contained in this Chapter, in particular relating to public advertising; and
  - (2) The participants are judged by an independent jury with a view to a design contract being awarded to a winner;
- N. Procurement of a prototype or a first good or service that is developed in the course of a contract for research, experiment, study or original development;
- O. Goods purchased on a commodity market; or
- P. Such other non-competitive procurement exemptions authorized by Council.

**§ 195-7.2. Limited solicitation exceptions.**

A limited solicitation may be undertaken in the following circumstances:

- A. Any procurement valued under \$133,800; or
- B. The confidential nature of the requirement is such that it would not be in the public interest to solicit competitive bids.

**§ 195-7.3. Non-competitive procurement contract authority – general.**

A contract may be awarded in relation to a non-competitive procurement by:

- A. The division head of the user division for a procurement of up to \$50,000, provided that the award value is within the division head's commitment authority under Chapter 71, Financial Control;
- B. The division head and the Chief Procurement Officer for a procurement of up to \$500,000, provided that the award value is within the division head's commitment authority under Chapter 71, Financial Control;

- C. The City Manager for a procurement of up to \$500,000; and
- D. Standing Committee and Council for all procurement valued up to or over \$500,000, or where the term of the contract exceeds five (5) years or exceeds the projected capital funding for the project as approved by Council.

**§ 195-7.4. Limited solicitation contract authority – general.**

A contract may be awarded in relation to a limited solicitation by:

- A. The division head of the user division for a procurement of up to \$120,000, provided that the award value is within the division head's commitment authority under Chapter 71, Financial Control;
- B. The Chief Procurement Officer for a procurement of up to \$500,000;
- C. The City Manager for a procurement of up to \$500,000; and
- D. Standing Committee and Council for all procurements valued over \$500,000, or where the term of the contract exceeds five (5) years or exceeds the projected capital funding for the project as approved by Council.

**§ 195-7.5. Non-competitive procurement or limited solicitation contract authority - emergency.**

- A. The City Manager or any division head may approve and enter into a contract in relation to a non-competitive procurement of goods or services required in an emergency of not more than \$500,000 or the division head's commitment authority as provided for in Chapter 71, Financial Control.
  - B. Where the potential value of the non-competitive contract exceeds \$500,000 or the commitment authority of the City Manager or any division head, either the Chief Procurement Officer and the City Manager or Chief Procurement Officer and the division head shall report jointly to Council through the appropriate Standing Committee as soon as practical and not later than the second regular meeting of Council after entering into the contract.
- r. By deleting Subsection 195-8.1. C. and replacing it with the following:
    - C. The term of the contract does not exceed a maximum term of five (5) years, including option periods, or the projected term of capital funding for a project as approved by Council; and
  - s. By deleting Subsection 195-8.2 C. and replacing it with the following:

- C. The term of the contract does not exceed a maximum term of five (5) years, including option periods, or the projected term of capital funding for a project as approved by Council; and
- t. By deleting Subsection 195-8.2 D. and replacing it with the following:
  - D. The contract is within funding approval under the provisions of Chapter 71, Financial Control up to a maximum procurement value of \$20,000,000.
- u. By deleting Subsection 195-8.4 and replacing it with the following:

**§ 195-8.4. Standing Committee authority.**

- A. Standing Committee is authorized to make an award arising from the issuance of a solicitation provided that the following conditions are met, based on the report of the Chief Procurement Officer, in consultation with the division head who initiated the solicitation:
  - (1) The award is to the supplier whose response meets the specifications and qualification requirements set out in the solicitation and whose response represents the best value to the City based on the evaluation criteria set out in the solicitation;
  - (2) The solicitation was conducted in a fair and transparent manner, in accordance with the process disclosed to all suppliers;
  - (3) The term of the contract does not exceed a maximum term of five (5) years, including option periods, or the projected term of capital funding for a project as approved by Council; and
  - (4) The contract is within funding approval under the provisions of Chapter 71, Financial Control, but exceeds a procurement value of \$20,000,000.
- B. Standing Committee shall be authorized to make an award arising from the issuance of a solicitation that meets all the conditions in subsection A, regardless of the contract value, where the Chief Procurement Officer or the division head or City official on whose behalf the solicitation was made are of the opinion that the award should be made by Standing Committee. Such awards shall be reported upon to the appropriate Standing Committee by the Chief Procurement Officer and the division head or City official who initiated the solicitation and, where necessary, the City Solicitor.
- v. By deleting Subsection 195-8.5 and replacing it with the following:

**§ 195-8.5. City Council authority.**

Council is authorized to make an award or to take any other appropriate action including rescinding an award or cancelling a solicitation in the following situations:

- A. The Chief Procurement Officer, after consulting with the division head or City official who has initiated the solicitation, has recommended an award to a supplier whose response may not materially meet the specifications and qualification requirements set out in the solicitation or whose response may not represent the best value to the City based on the evaluation criteria set out in the solicitation;
  - B. The award exceeds the contract term limit of five (5) years, including option periods, or exceeds the projected capital funding for a project previously approved by Council;
  - C. The Chief Procurement Officer, after consulting with the City Solicitor, has determined that there are material risks as to the merits of making or rescinding any award;
  - D. The contract does not have funding approval;
  - E. The Chief Procurement Officer or the City official on whose behalf the solicitation was made are of the opinion that the award should be made by Council; or,
  - F. Council has directed that the award be made by Council.
- w. By deleting Subsection 195-9.1 and replacing it with the following:

**§ 195-9.1. Cancellation of solicitations.**

The Chief Procurement Officer shall be authorized to cancel any solicitation where:

- A. There is a request by the division head who initiated the solicitation where the cost of the responses exceed the funding approval for the proposed contract.
- B. In the opinion of the division head responsible for the solicitation:
  - (1) A change in the scope of work or other solicitation requirements are necessary and therefore a new solicitation should be issued;
  - (2) The goods or services or both identified in the solicitation no longer meet the division's requirements; or
  - (3) The goods or services or both are no longer required.

- C. In the opinion of the Chief Procurement Officer and the Controller, in consultation with the City Solicitor, it is determined that the integrity of the solicitation process has been compromised as a result of:
  - (1) A material breach of the process as disclosed in the solicitation;
  - (2) Uncertainty, lack of clarity, potential confusion, or ambiguity in the drafting of the solicitation; or
  - (3) Lack of equal access to significant information relative to the solicitation.
- D. The solicitation has failed to elicit competition or any qualified supplier.
- E. In the opinion of the Chief Procurement Officer there are legitimate business and legal risk reasons to support the cancellation of a solicitation.

x. By deleting Subsection 195-10.1 and replacing it with the following:

**§ 195-10.1. Pre-award bid disputes.**

Suppliers should seek a resolution of any pre-award bid dispute by communicating directly with the Chief Procurement Officer as soon as possible from the time when the basis for the bid dispute became known to them. The Chief Procurement Officer may delay an award, or any stage of a procurement, pending the acknowledgement and resolution of any pre-award bid dispute.

y. By deleting Subsection 195-10.2 and replacing it with the following:

**§ 195-10.2. Post-award bid disputes.**

- A. Post-award bid disputes must be received in writing by the Chief Procurement Officer no later than ten (10) business days after the date of the award notification.
- B. Where a debriefing has been requested, a post-award bid dispute must be received in writing by the Chief Procurement Officer no later than five (5) business days after a debriefing request is received. Any dispute that is not received in writing within five (5) business days will not receive further consideration.
- C. Post-award bid disputes with a procurement value over \$133,800 that cannot be resolved by the Chief Procurement Officer through consultations with the supplier shall be referred by the Chief Procurement Officer to the Controller or their delegate (s) for an impartial review, based on the following information:
  - (1) A specific description of each act or omission alleged to have materially breached the procurement process;

- (2) A specific identification of the provision in the solicitation, procurement policies or procurement procedure that is alleged to have been breached;
- (3) A precise statement of the relevant facts;
- (4) An identification of the issues to be resolved;
- (5) The supplier's arguments, including any relevant supporting documentation; and
- (6) The supplier's requested remedial action.

The Controller or their delegate(s), in consultation with the City Solicitor, may:

- (7) Dismiss the dispute; or
  - (8) Accept the dispute and direct the Chief Procurement Officer to take appropriate remedial action, including, but not limited to, rescinding the award and any executed contract, and canceling the solicitation.
- D. The Controller may adopt and publish such further procedures as are necessary to ensure an independent and timely review and resolution of post-award bid disputes.
- z. By deleting Subsection 195-11.1 A. and replacing it with the following:
- A. Any contract in excess of \$133,800 shall be in a form satisfactory to the City Solicitor;
- aa. By deleting Subsection 195-11.1 G. and replacing it with the following:
- G. The division head, in consultation with the Chief Procurement Officer, may issue a Divisional Purchase Order for any procurement award of \$120,000 or less, provided that the award value is within the division head's commitment authority under Chapter 71, Financial Control.
- bb. By deleting Subsection 195-12.2 E. and replacing it with the following:
- E. Classifying as waste and recycling, scrapping, dismantling, destroying or disposing.
- cc. By deleting Subsection 195-13.3 and replacing it with the following:

**§ 195-13.3. Conflicts of interest or unfair advantage.**



Suppliers must declare and fully disclose any actual or potential conflict of interest or unfair advantage related to the preparation of their bid or where the supplier foresees an actual or potential conflict of interest in the performance of the contract. Such potential conflicts of interest or unfair advantages include, but are not limited to:

- A. Engaging current or former City employees or public office holders to take any part in the preparation of the bid or the performance of the contract if awarded, any time within two (2) years of such persons having left the employ or public office of the City;
- B. Engaging any family members, friends or private business associates of any public office holder which may have, or appear to have, any influence on the procurement process, or subsequent performance of the contract;
- C. Prior involvement by the supplier or affiliated persons in developing the technical specifications or other evaluation criteria for the solicitation;
- D. Prior access to confidential City information by the supplier, or affiliated persons, that is materially related to the solicitation and that was not readily accessible to other prospective suppliers; or
- E. The supplier or its affiliated persons are indebted to or engaged in ongoing or proposed litigation with the City in relation to a previous contract.

Notwithstanding the above requirements, the Chief Procurement Officer, in consultation with the City Solicitor, may disqualify any supplier who has declared any actual or potential conflict of interest or unfair advantage that cannot be resolved.

- dd. By deleting Subsection 195-13.4 and replacing it with the following:

**§ 195-13.4. Collusion or unethical bidding practices.**

No supplier may discuss or communicate, directly or indirectly, with any other supplier or their affiliated persons about the preparation of the supplier's bid including, but not limited to, any connection, comparison of figures or arrangements with, or knowledge of any other supplier making a bid for the same work. Suppliers shall disclose to the Chief Procurement Officer any affiliations or other relationships with other suppliers that might be seen to compromise the principle of fair competition, including any proposed subcontracting relationships.

- ee. By deleting Subsection 195-13.5 and replacing it with the following:

**§ 195-13.5. Illegality.**

- A. A supplier shall disclose if they, an affiliated person, or anyone who has ownership interest in the supplier, has any previous convictions for

collusion, bid-rigging, price-fixing, bribery, fraud or other similar behaviours or practices prohibited under the Criminal Code, the Competition Act or other applicable law, for which they have not received a pardon.

- B. A supplier or its affiliated person, shall be deemed ineligible for an award for a minimum period of five (5) years from the date of the conviction, unless pre-approved by the Controller.

ff. By deleting Subsection 195-13.9 and replacing it with the following:

**§ 195-13.9. Prohibited communication during the solicitation.**

No supplier, or affiliated person, may discuss or communicate either verbally, or in writing, with any employee, public office holder, or the media in relation to any solicitation between the time of the issuance of the solicitation, which for open competitive procurements is the issuance of the notice of intended procurement, to the award and execution of final form of contract, unless such communication is expressly permitted in the solicitation and in compliance with Chapter 140, Lobbying. All supplier communications shall be with the Chief Procurement Officer or the employee specifically delegated for that purpose in the solicitation.

gg. By deleting Subsection 195-13.11. B and replacing it with the following:

- B. Suppliers shall maintain a satisfactory performance rating on their previous contracts with the City and other public bodies to be qualified for the award of similar contracts.

hh. By deleting Subsection 195-13.11 C. and replacing it with the following:

C. Without limiting A and B, no supplier shall, in the performance of a contract with the City:

- (1) Materially fail to perform in accordance with the terms of one or more contracts;
- (2) Over-bill, double bill, retain a known over-payment, or fail to notify the City of an over-payment or duplicate payment within a reasonable time;
- (3) Bill for goods or services not supplied;
- (4) Bill for goods or services of one grade, while supplying goods or services of an inferior grade;
- (5) Misrepresent the quality or origin of goods and services, their functionality or suitability for a purpose, or their performance characteristics;

- (6) Misappropriate any property or right of the City, in any form;
- (7) Submit false or exaggerated claims to the City;
- (8) Submit misleading information to the City;
- (9) Seek modifications to the price of a contract through false or misleading representations, including materially undervaluing a bid or any included unit prices to win a contract award with the intention of later seeking unnecessary contract modifications;
- (10) Fail to pay debts to the City upon reasonable demand;
- (11) Act in any manner that is a conflict of interest with the City without the knowledge and consent the City; or
- (12) Any other professional misconduct or omissions that adversely reflect on the commercial integrity of the supplier.

ii. By deleting Subsection 195-13.12 and replacing it with the following:

**§ 195-13.12. Disqualification of suppliers for non-compliance.**

- A. Suppliers shall be required to certify compliance with the Supplier Code of Conduct as set out in Article 13 of this Chapter with their bid and verify compliance prior to award. Any contravention of the Supplier Code of Conduct by a supplier may be grounds for the Chief Procurement Officer to disqualify a supplier from being awarded a contract.
- B. A contravention of the Supplier Code of Conduct may also be grounds for the division head to terminate any contract awarded to that supplier and require the return of any advance payments.

jj. By deleting Subsection 195-13.13 and replacing it with the following:

**§ 195-13.13. Suspension of suppliers from future solicitations.**

- A. Without limiting or restricting any other right or privilege of the City, Council may suspend a supplier's eligibility to bid for a period between one (1) and five (5) years based upon evidence that there has been a contravention of the Supplier Code of Conduct or for any other professional misconduct or omissions that adversely reflect on the commercial integrity of the supplier.
- B. Without limiting or restricting any other right or privilege of the City, the Chief Procurement Officer, in consultation with the City Solicitor, may also temporarily suspend a supplier's eligibility to bid for up to six (6) months based upon evidence that there has been a contravention of the Supplier Code of Conduct or for any other professional misconduct or

omissions that adversely reflect on the commercial integrity of the supplier.

- C. The Chief Procurement Officer shall submit an annual report to the appropriate Standing Committee, where any supplier has been suspended under this Article.

kk. By deleting Subsection 195-13.14. B. and replacing it with the following:

- B. A decision to reinstate a suspended supplier may be made by City Council based on the recommendation of both the Chief Procurement Officer and the appropriate division head, subject to such reasonable conditions or limitations that ensure the supplier will not pose a material risk to the City's procurement process, contract management or reputation for the remaining duration of the original suspension.

ll. By deleting Subsection 195-14.1 and replacing it with the following:

**§ 195-14.1. Employee ethical procurement standards.**

- A. City employees must perform their duties and arrange their private interests so that the public confidence in their integrity, objectivity and impartiality are conserved and enhanced in compliance with Chapter 192, Public Service.
- B. Any potential conflict of interest or unfair advantage related to a divisional procurement, where known, shall be disclosed to the Chief Procurement Officer as early as possible in the procurement process by the division head or staff.
- C. Any potential conflict of interest or unfair advantage shall be managed in a manner consistent with the highest standards of purchasing ethics, which is not limited to cancelling a solicitation or implementing reasonable safeguards to prevent an employee from having any access to confidential information or involvement in a particular procurement.

mm. By deleting Subsection 195-14.2 and replacing it with the following:

**§ 195-14.2. In-house bids restricted.**

Bids to any solicitation will not be accepted from internal City employees or divisions, without prior approval by Council, including approval of the process for fairly evaluating those bids.

nn. By deleting Subsection 195-14.6 and replacing it with the following:

**§ 195-14.6. Conflict with policies and procedures.**

If there is a conflict or inconsistency between this Chapter and any of the procurement policies and procurement procedures, this Chapter shall govern and take precedence.

2. Section 1 of this by-law shall come into force on July 1, 2024.

Enacted and passed on March , 2024.

Frances Nunziata,  
Speaker

John D. Elvidge,  
City Clerk

(Seal of the City)