

Authority: Government Management Committee Item GM25.4, as adopted by City of Toronto Council on March 26 and 27, 2018

CITY OF TORONTO

BY-LAW 271-2018

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;

The Council of the City of Toronto enacts:

The City of Toronto Municipal Code Chapter 195, Purchasing, is amended by:

1. Deleting the definition of "Chief Purchasing Official" from § 195-2.1 and substituting the following:

CHIEF PURCHASING OFFICER - The person designated to undertake the responsibilities of the chief purchasing officer of the City.

2. Deleting the references to "Chief Purchasing Official" from Chapter 195, and substituting "Chief Purchasing Officer".

3. Amending § 195-4.1 (Division head responsibilities) by:

Deleting Subsection G and substituting the following:

G. Directing and overseeing the management of all contracts led by or coordinated by their division including, without limitation, the approval of subcontracting, assignment, amendment, optional renewal, early termination, enforcement of warranty and performance security and the adoption of related divisional contract management procedures;

4. Amending § 195-4.2. (Division project lead responsibilities) by:

Deleting Subsection D and substituting the following:

D. Managing the contract, 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;

5. Amending § 195-7.3. (Non-competitive or limited solicitation contract authority - general) by:

Deleting Subsection A and substituting the following:

- 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;

Deleting Subsection B and substituting the following:

- B. The division head and the Chief Purchasing Officer for a procurement of up to \$100,000, provided that the award value is within the division head's commitment authority under Chapter 71, Financial Control;

6. Deleting § 195-7.4. (Non-competitive or limited solicitation contract authority - emergency) and substituting the following:

§ 195-7.4. Non-competitive 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, the Chief Purchasing Officer and the City Manager or division head shall report jointly to Council through the Government Management Committee as soon as practical and not later than the second regular meeting of Council after entering into the contract.

7. Amending § 195-8.1. (Authority to Award – Chief Purchasing Official) by:

Deleting Subsection D and substituting the following:

- D. The contract is within the division head's commitment authority and has funding approval under the provisions of Chapter 71, Financial Control up to a maximum of \$500,000.

8. Amending § 195-11.1. (Contract execution and purchase orders) by:

Deleting Subsection D and substituting the following:

- D. Notwithstanding Subsection C, the Clerk and division head with management authority for the award may enter into and execute the contract documents in relation to that division's award;

Deleting Subsection E and substituting the following:

- E. The division head with management authority for the award may alone, enter into and execute the contract documents in relation to that division's award of \$500,000 or less provided that the award value is within the division head's commitment authority under Chapter 71, Financial Control;

Deleting Subsection G and substituting the following:

- G. The division head, in consultation with the Chief Purchasing Officer, may issue a Divisional Purchase Order for any procurement award of \$50,000 or less, provided that the award value is within the division head's commitment authority under Chapter 71, Financial Control.

- 9. Deleting § 195-13.11. (Supplier performance) and substituting the following:

§ 195-13.11. Supplier performance.

- A. Suppliers shall fully perform their contracts with the City and follow any reasonable direction from the City to cure any default.
- B. Suppliers shall maintain a satisfactory performance rating on their previous contracts with the City and other public bodies to be qualified to be awarded similar contracts.
- C. Without limiting paragraphs A and B above, 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.

10. Deleting § 195-13.13 (Suppliers in debt or in litigation with the City) and § 195-13.14 (Suspension of suppliers from future solicitations) and substituting 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 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 Purchasing 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 any other professional misconduct or omissions that adversely reflect on the commercial integrity of the supplier.
- C. The Chief Purchasing Officer shall submit an annual report to Government Management Committee, where any supplier has been suspended under this Article.

§ 195-13.14. Review of Suspensions.

- A. A suspended supplier may apply to the Chief Purchasing Officer for a review of their suspension upon completion of one year or at least half of their total suspension period. An application for review must be in writing and include the reasons and any reasonable supporting documentation.

- B. A decision to reinstate a suspended supplier may be made by City Council based on the recommendation of both the Chief Purchasing 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.

Enacted and passed on March 27, 2018.

Frances Nunziata,
Speaker

Ulli S. Watkiss,
City Clerk

(Seal of the City)