



REPORT FOR ACTION

Bringing Significant Procurements to Council Prior to Issuance

Date: October 27, 2017
To: Government Management Committee
From: Treasurer
Wards: All

SUMMARY

City Council directed staff to report back on reviewing the criteria for when staff should bring important procurements to City Council for policy direction prior to the issuance of the procurement as set out in the "Access to Councillors during a Procurement Process Policy" and to further ensure that City Council decides on the appropriate procurement approach for significant contracting out prior to the issuance of the procurement.

As part of the City's Procurement Policies, guidelines are set out in the "Policy for Access to Information to Members of Council at Various Stages of the Procurement Process" for when staff should consider bringing procurements to Council prior to the issuance of such a procurement. The Policy is also used as a guideline for when Council considers directing staff to report to Council in advance of issuing a procurement.

Over the last number of years, where an organizational restructuring that is significant is being considered, the appropriate Division has reported to Council in advance of issuing the procurement, for the appropriate guidance and direction. As such, based on the experience to date, staff believe the criteria for when staff should bring important procurements to City Council in advance is working well, including with respect to significant contract out situations, and therefore staff are not recommending any changes.

RECOMMENDATIONS

The Treasurer recommends that:

1. Government Management Committee receive this report for information.

FINANCIAL IMPACT

There are no financial impacts associated with the adoption of this report.

The Acting Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its July 12, 13, 14 and 15, 2016 Council meeting, Council adopted, as amended, GM13.13 "Amendments to the Purchasing By-law and Procurement Processes Policy". As part of that report, Council directed the Treasurer to report back on:

- a. the feasibility of developing a Canadian Content Procurement Policy in compliance with existing trade agreements; and
- b. reviewing the criteria for when staff should bring important procurements to City Council for policy direction prior to the issuance of the procurement as set out in the "Access to Councillors during a Procurement Process Policy" and to further ensure that City Council decides on the appropriate procurement approach for significant contracting out prior to the issuance of the procurement.

See: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.GM13.13>

At its July 19, 20, 21 and 26, 2005, Council meeting, Council adopted, as amended, Administration Committee Report 6, Clause 9, "Policy for Access to Information to Members of Council at Various Stages of the Procurement Process" which established the Policy and the guidelines for which staff should consider to report to Council on a procurement prior to the issuance of the procurement.

www.toronto.ca/legdocs/2005/agendas/council/cc050719/adm6rpt/cl009.pdf

COMMENTS

Council's and Councillors' Roles in the Procurement Process

As noted in the Report "Policy for Access to Information to Members of Council at Various Stages of the Procurement Process", the role of Council can be summarized as follows:

- to set the budget and related priorities that determine procurement needs;
- to set the procurement policies for the City and to set out the monitoring process that ensures that the policies are followed by professional staff; and

- Committee or Council as a whole carry out the monitoring of the City's procurement policies and the oversight of an individual procurement, rather than individual Councillors.

The role of individual Councillors in the procurement process was identified in the Bellamy Inquiry, in recommendations 129 to 132 (set out in Attachment 1). The role of individual Councillors can be summarized as follows:

- Councillor involvement in the specific steps of the procurement process is discouraged to protect the integrity of the process from allegations of inappropriate political influence or interference in procurement decisions. Separating the roles and responsibilities of administrative staff from those of the elected officials provides protection to the City and Councillors from such allegations;
- Councillors should not have access to the drafts of tender documents and drafting should be left to the expertise of members of staff;
- Councillors may properly identify to City staff, in a general sense, equipment or services that the City should consider procuring that will better serve the public. This is part of Council's larger job of setting procurement priorities and budgets; and
- Councillors can assist potential suppliers by directing them to the appropriate City staff who can inform them in relation to aspects of the City's procurement process and, when contacted in this regard, should direct them to engage with the City's Purchasing and Materials Management Division about specific procurements and opportunities.

The Role of the City Manager

Under section 140 of the City of Toronto Act, the City may appoint a Chief Administrator Officer who shall be responsible for exercising general control and management of the affairs of the City for the purpose of ensuring the efficient and effective operation of the City. Pursuant to Chapter 160, "Officials, City" of the Municipal Code the City Manager is the Chief Administrator Officer of the City and Council has delegated to the City Manager, the responsibility for the proper administration of the affairs of the City, including organizational restructuring, in accordance with the by-laws adopted by the Council. The City Manager is also delegated the responsibility to manage the physical, human and financial resources of the City. A policy on bringing procurements to Council in advance of issuing the procurement needs to compliment and respect the authority of the City Manager as set out in the Municipal Code. As was noted by Madam Justice Bellamy in Volume 2 - Good Government of her 2005 Report from the "Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry":

Although the Mayor can properly be involved in hiring the City Manager, there should be a clear division of responsibility between the Mayor and the office of the City Manager—a separation of the political from the administrative.

The relationship between Council and the City Manager is a very important one. The City Manager is a leadership position, the head of the Toronto Public Service. Council should give the City Manager clear and unequivocal responsibility and accountability for the overall management of the administration of the City. Not doing so undermines the City Manager's effectiveness. A detailed

description of the mechanism of authority should be set out as between the City Manager, department heads, and the Mayor and Council.¹

Over the last number of years, where an organizational restructuring that is significant is being considered, the appropriate Division has reported to Council in advance of issuing the procurement, for the appropriate guidance and direction. As such, based on the experience to date, staff believe the criteria for bringing important procurements to City Council in advance is working well, including with respect to significant contract out situations and is complimentary to the City Manager's authority.

Reviewing Significant Procurements Prior to Issuance

As part of Council's responsibility of setting the budget and procurement priorities, Council can play a role in significant and strategic procurements prior to the development and issuance of a call. That was the basis for setting the guidelines in the "Policy for Access to Information to Members of Council at Various Stages of the Procurement Process". The guidelines allow staff to consider when they should bring a procurement to Council prior to its development and issuance or when Council may direct staff (for example as part of the budget process) to report to Council prior to the issuance of particular significant and strategic procurements. The guidelines were established not to bring all procurements to Council prior to issuance, but those that are significant and/or strategic.

The guidelines contain the following criteria:

Contract term	The recommended minimum threshold of the procurement under consideration is a term of contract of at least five years or where the goods and services acquired are expected to be in service beyond five years.
Contract value	The recommended minimum threshold of the procurement under consideration is \$20,000,000 which is the approval threshold of Standing Committee
Contract Profile	A quantitative measure cannot be applied to this criterion. However, third party interest in past procurements of a similar nature or third party interest expressed during budget deputations can provide guidance in this area.
Specification/Scope Stability	A quantitative measure cannot be applied to this criterion. Specification stability relates to the options available to satisfy a particular need and whether or not new, potentially attractive options are emerging or whether or not technological obsolescence is a concern

¹ Report of Madam Justice Denise Bellamy "Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry" 2005, Toronto, Volume 2, page 72

These are guidelines for staff to take into consideration. A contract that is over \$20 million alone would not necessarily mean that staff would report to Council prior to the issuance of the call, the entire context of the procurement would need to be taken into consideration.

There are a number of examples in which staff have reported to Council prior to the issuance of the procurement, or which Council has requested staff to report prior to the issuance of the procurement. Some examples include:

- Future Curbside Collection Service Delivery East of Yonge Street
 - Potential Contracting out of District 3 and 4 Curbside Collection
- Fleet Services Review - Detailed Implementation Plan for the Fleet Services Strategy
 - Contracting out of all preventative maintenance and repairs of Non-Specialized Class 1-2 vehicles
- George Street Revitalization - Recommended Procurement and Delivery Strategy
 - Approval of a P3 procurement approach for George Street Revitalization
- F.G. Gardiner Expressway Strategic Rehabilitation Plan Procurement Strategy
 - Approval of a P3 procurement approach for the F.G. Gardiner rehabilitation
- Response to the Service Efficiency Study Recommendations for Hostel Services
 - Request to issue Request for Expressions of Interest to explore feasibility of contracting out hostel services
- City of Toronto E-mail System Strategy
 - Approval of the procurement strategy to replace the previous e-mail system
- Solid Waste Management Services Garbage Collection Request for Quotations (RFQs)
 - Approval to Contracting out of District 2 Curbside Collection and other related garbage collections

Reviewing the Criteria, in particular as it relates to significant Contracting Out Issuance

As part of the report back, Council specifically asked the Treasurer to review the criteria for when staff should bring important procurements to City Council for policy direction prior to the issuance of the procurement as set out in the "Access to Councillors during a Procurement Process Policy" and to further ensure that City Council decides on the appropriate procurement approach for significant contracting out prior to the issuance of the procurement.

In the past five years, there has only been one example of a significant contracting out in which staff did not report in advance of the issuance of the procurement. That specific example was related to Custodial Services. Since that procurement, Council has directed staff regarding how the procurements for that type of service should be performed (via an RFP) as well as the standards which must be embedded into the RFP and subsequent contracts moving forward.

As a result, staff are not recommending any changes to the Policy. In the preparation of this report, the Treasurer's Office consulted with the City Manager's Office, Human Resources, Legal Services and Social Development, Finance and Administration.

CONTACT

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SIGNATURE

Mike St. Amant
Treasurer

ATTACHMENTS

Attachment 1 - Excerpt from the Bellamy Inquiry

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https://www1.toronto.ca/inquiry/inquiry_site/report/pdf/TCLI_TECI_Report_Good_Governance.pdf

85. Although the Mayor can properly be involved in hiring the City Manager, there should be a clear division of responsibility between the Mayor and the office of the City Manager—a separation of the political from the administrative.

129. City Council should establish fair, transparent, and objective procurement processes. These processes should be structured so that they are and clearly appear to be completely free from political influence or interference.

130. Councillors should separate themselves from the procurement process. They should have no involvement whatsoever in specific procurements. They have the strongest ethical obligation to refrain from seeking to be involved in any way.

131. Members of Council should not see any documents or receive any information related to a particular procurement while the procurement process is ongoing.

132. Councillors who receive inquiries from vendors related to any specific procurement should tell them to communicate with one or more of the following three people, as is appropriate in the circumstances:

- a. the contact person in the tender document, in accordance with the contact rules in place
- b. the fairness commissioner
- c. the person in charge of the complaints process, as set out in the tender documents