Civic Theatres Toronto

RE: CT1.9
Attachment 1

FINANCE POLICY

Title	Effective Date	Policy Number
Procurement Processes	**September 2018**	**313**

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Policy Sections

1. Purpose

The purpose of this policy is to protect the interests of Civic Theatre Toronto (CTT), the public and persons participating in the procurement process. This will be accomplished by reinforcing fairness, openness, transparency and integrity, and by adopting consistent and standard approaches for all stages of CTT's procurement processes.

The policies outlined here must be read in conjunction with Purchasing Policies and Procedures (#303).

Purchasing of performances must follow CTT Policy #205 - At Risk Presentation and therefore fall outside of this policy.

2. Interpretation

Definitions for this policy are as set out in Article 195-2.1 of Chapter 195, Purchasing, of the Toronto Municipal Code.

Purchasing Department means the department within CTT administrating the purchasing process of the specified goods or service. This may or may not be the department using the actual goods or services.

The President & CEO of CTT may adopt supplemental procedures to ensure clear segregation of duties for all stages of the procurement cycle.

3. Approval Authority

See policy #303 - Purchasing Policies and Procedures.

4. Competitive Procurement Thresholds

4.1. CTT shall conduct an open and competitive procurement process where the value of goods and services exceeds $100,000 subject to those exemptions or non-competitive procurement or limited solicitation exceptions set out in the Purchasing Policies and Procedures.

4.2. CTT will not reduce the procurement value or subdivide the procurement into multiple procurements in order to avoid any competitive procurement threshold.

4.3. It is recommended that goods and services between the thresholds of $7500 - $100,000 also be competitively procured through at least a limited solicitation, inviting at least two (2) suppliers, subject to any applicable non-competitive procurement exception.

5. Standard Procurement Solicitation Methods

5.1. Information Gathering

a) The Finance Department may assist the purchasing department in the development of requirements for any procurement through the use of informal market research and formal market research including but not limited to, the use of market soundings, vendor days, requests for information (RFIs), and requests for expression of interest (REOIs.)

b) The Finance Department shall not use a response from a RFI or a REOI to pre-qualify potential suppliers and shall not use the response to influence the chances of the participating suppliers from becoming the successful proponent in any subsequent opportunity.

c) The Finance department will ensure a department has been assigned as the Purchasing Department for each goods and service to be purchased.

5.2. Re-Qualification for Selective Solicitations

a) Request for Supplier Qualification

i. The Purchasing Department VP is authorized to determine, in consultation with the Finance department, those suppliers meeting the minimum disclosed standards for technical qualifications and professional competence to respond to future related Solicitation(s).

ii. The Purchasing Department may use a request for supplier qualification (RFSQ) prior to a solicitation for tenders, quotations or proposals, where it is deemed that the nature and complexity of the work involved warrants the time and effort required to pre-select the most experienced and qualified bidders.

iii. The Purchasing Department shall include language that disclaims any contractual commitment or other obligation of CTT to call on any supplier to provide goods or services as a result of pre-qualification within the RFSQ.

b) Equipment or Specialty Subcontractors

The Purchasing Department VP has the authority to prequalify suppliers that includes the selection of specified equipment, facilities, specialty subcontractors, and/or materials suppliers, if required in the opinion of the Purchasing Department VP, for incorporation in the technical specifications of any future solicitation. This section is subject to section 11 (Non-discrimination) below.

c) Establishment of a Multi-Use List for Selective Solicitations

   i. In situations where a department, or multiple departments require the same type of goods or service on a regular or recurring basis, it may not be efficient or cost effective to initiate a new open procurement process each time that particular goods or service is required. In such cases, a multi-use list of qualified suppliers may be established for the purpose of selective solicitations.

   ii. When using a multi-use list, CTT shall allow suppliers to apply at least annually for inclusion in accordance with the notice of intended procurement for the RFSQ.

   iii. A call-up protocol shall be disclosed in the RFSQ that sets out the subsequent selection process and the general terms and conditions that will govern any future work assignments and, where applicable, any proposed framework pricing. The call-up protocol contained in a RFSQ shall also disclaim any contractual commitment or other obligation of CTT to call on any supplier on the multi-use list to provide goods or services.

   iv. Approval of any subsequent award to a supplier under the RFSQ call up protocol, shall be in accordance with the authority to award open competitive solicitations.

5.3. Open Competitive Solicitations

The following solicitation methods may be used where CTT is required to issue an open competitive solicitation:

a) Request for Tenders (RFT)

   A request for tenders may be used to obtain bids for construction services, whenever the Department Head 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, subject to any other provisions of the Purchasing Policies and Procedures.

b) Request for Quotations (RFQ)

   A request for quotations may be used to obtain goods and services (other than construction services) whenever the Department Head has pre-determined the required quantity and/or quality of the goods and services and the evaluation criteria to determine the best value is generally the lowest cost bid meeting technical specifications without any material contract negotiations, subject to any other provisions of the Purchasing Policies and Procedures.

c) Request for Proposals (RFP)

A request for proposals shall be used to obtain goods and services of a unique or complex nature where all or part of the requirements cannot be precisely defined and the expectation is that suppliers are to propose solutions to arrive at the desired result and the evaluation criteria to determine best value may include more than price factors. The RFP 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 pursuant to a process detailed in the RFP, subject to any other provisions of the Purchasing Policies and Procedures.

d) Selective Solicitations

Selective solicitations involving a RFSQ in combination with any other solicitation method, shall be preceded by a notice of intended procurement. Only the second stage of a multi-stage procurement shall be considered a contract award.

6. Timelines for Posting Procurements

6.1. The Purchasing Department shall implement procedures that ensure suppliers are provided with a response time for the open competitive procurement of goods and services that meet the minimum requirements outlined in applicable law, including applicable trade agreements.

6.2. Where no trade agreement applies, the Purchasing Department will determine the appropriate response time for the solicitation.

7. Bid Receipt and Openings

The Purchasing Department shall ensure that the bid submission date and closing time are clearly stated on all solicitations (printed and/or electronic) where applicable. In addition, the Purchasing Department shall ensure that the closing date of a competitive procurement process is on a regular working day. Regular working days are Monday to Friday, excluding provincial and federal statutory holidays.

Bids that are received after the closing date and time shall be returned to suppliers unopened and not evaluated except where approved by the VP of Finance of Administration or the President & CEO.

8. Evaluation Criteria and Process Disclosure

8.1. Evaluation Criteria

a) The Finance Department, in consultation with the Purchasing Department, shall develop evaluation criteria.

b) All solicitations issued by the Purchasing Department shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids or proposals and, where appropriate, the methods of weighting and evaluating the criteria.

c) In addition, all solicitations issued will, where appropriate:

i. Clearly outline mandatory, rated, and other criteria that will be used to evaluate submissions, including the weight of each criterion;

ii. State that submissions that do not meet the mandatory criteria will be disqualified;

iii. Clearly establish the formula for calculating the total price/cost ;

iv. Ensure that all mandatory and rated criteria comply with the Non-Discrimination section of the bylaw and this policy;

v. Minimize mandatory requirements (e.g., submission and performance mandatory requirements) to ensure that no bid is disqualified except to serve a legitimate business or public policy objective;

vi. Allocate maximum justifiable weighting to the price/cost component of the evaluation criteria; and

vii. Disclose whether negotiations are permitted, and if so, whether the negotiations will be concurrent negotiations or consecutive negotiations, the permitted scope and process for negotiations;

8.2. Negotiation Procedures

a) Where negotiations are permitted by a solicitation, they must be conducted fairly and in a manner that does not disclose confidential commercial information about any other supplier.

b) Alternative strategies or solutions shall not be considered for evaluation, unless they are explicitly requested in the solicitation, and the process for evaluating such strategies or solutions is disclosed to all potential suppliers.

c) For RFTs for construction services, negotiations are generally not permitted unless CTT is unable to recommend an award within the funding approval of City Council. In those circumstances where the solicitation may otherwise be cancelled, the Department Head, in consultation with City Legal Services, may alternatively negotiate with the lowest compliant bidder (only) to identify any acceptable changes in the scope or quality of work and their corresponding bid price reduction, up to 15% of the contract value, in a manner consistent with CCDC 23 – A Guide to Calling Bids and Awarding Construction Contracts and such other procedures adopted by the President & CEO of CTT.

8.3. Addenda Procedures

No changes to the evaluation criteria or the respective weightings shall occur after closing.

8.4. Math Errors and Tied Bids Procedures

The VP of Finance and Administration shall establish a procedure for resolving mathematical errors and tied bids for all competitive solicitations.

8.5. Unbalanced Bid Analysis

a) The VP of Finance and Administration shall establish a procedure for analyzing bids and proposals received to determine if CTT has received an unbalanced bid and the actions CTT may take in response to a materially unbalanced bid, including rejection.

   For the purpose of this policy, a materially unbalanced bid means a bid that:

   i. is based on prices which are significantly less than cost for some items of work and prices which are significantly overstated in relation to cost for other items of work; and

   ii. CTT has determined may not result in the lowest overall cost to CTT even though it may be the lowest submitted bid; or

   iii. is so unbalanced as to be tantamount to allowing an advance payment.

8.6. Major and Minor Bid Irregularities

In addition to the discretion provided to the VP of Finance and Administration to resolve major and minor bid irregularities, the VP of Finance and Administration may establish procedures for resolving common bid irregularities for open competitive solicitations.

In the event of any conflict between the evaluation criteria disclosed in a solicitation and the list of common irregularities contained in any purchasing procedure, the evaluation criteria disclosed in the open competitive solicitation shall govern.

In exercising judgment with respect to any bid irregularity, the VP of Finance and Administration shall consider the advice of the City Solicitor.

9. Evaluation Team

9.1. Competitive procurement processes require an evaluation team responsible for reviewing and rating the compliant bids in accordance with the criteria disclosed in the solicitation where applicable.

9.2. The same evaluation team shall be responsible for evaluation of all submissions. The evaluation team shall include department staff member(s) with the relevant experience to evaluate bidders or proponent's submissions. The size of the evaluation team shall be reflective of the complexity and value of the procurement and shall not be comprised of less than two (2) members. Staff representatives from operational and support departments may also be included on the evaluation team where appropriate, including complex or high profile projects and those having corporate-wide implications.

9.3. The President & CEO shall ensure that all evaluation team members are made aware of the restrictions related to utilization and distribution of confidential and commercially sensitive information collected through the competitive procurement process and their obligation to refrain from engaging in activities that may create or appear to create a conflict of interest or evaluation bias.

9.4. Evaluation team members as well as any other divisional staff involved in the preparation of the solicitation, must sign a conflict-of-interest declaration and non-disclosure of confidential information agreement for each procurement.

10. Evaluation Criteria Matrix

10.1. Each evaluation team member shall independently complete an evaluation criteria matrix, rating/ranking each of the bid submissions, on the basis of the pre-established evaluation criteria. Evaluators must ensure that they document their evaluation of each bid submission in a manner that is fair, factual, and fully defensible.

10.2. All records of evaluation scores will be retained for auditing purposes.

11. Non-Discrimination

11.1. CTT shall not discriminate or exercise preferential treatment in the awarding a contract to a supplier as a result of a competitive solicitation, unless it can be justified on the basis of a legitimate business objective, public policy, or applicable law.

11.2. Measures that may be inconsistent with this non-discrimination policy include, but are not limited to, the following:

a) The imposition of conditions in the solicitation, registration requirements or qualification procedures that are based on the location of a supplier's place of business, the place where the goods are produced or the services are provided, or other like criteria;

b) The biasing of technical specifications in favour of, or against, particular goods or services, including those goods or services included in construction contracts, or in favour of, or against, the suppliers of such goods or services for the purpose of avoiding non-discrimination obligations;

c) The timing of events in the solicitation process so as to prevent suppliers from submitting bids;

d) The specification of quantities and delivery schedules of a scale and frequency that may reasonably be considered as deliberately designed to prevent suppliers from meeting the requirements of the procurement;

e) The division of required quantities or the diversion of budgetary funds to CTT in a manner designed to avoid these non-discrimination obligations;

f) The use of price discounts or preferential margins in order to favour particular suppliers; and

g) An unjustified requirement that a construction contractor or subcontractor use workers, materials or suppliers of materials originating from the location where the work is being carried out.

12. Non-Competitive Procurement and Limited Solicitations

12.1. Non-Competitive Procurement Process

a) CTT will employ a competitive procurement process wherever possible to achieve optimum value for public money. However, where exemptions or exceptions justify a negotiated non-competitive procurement, CTT staff accountable for the non-competitive procurement must still be satisfied that the negotiation process achieves the optimum value for public money, prior to the approval of the non-competitive contract.

b) The authority to award a contract pursuant to a non-competitive procurement process shall be in accordance with the non-competitive contract authority set out in the Purchasing Policy #303 or when approved by the President & CEO.

12.2. Unsolicited Quotations or Proposals

Unsolicited proposals should not be considered where they would circumvent any planned procurement process, including any potential REOI or RFI process. An unsolicited proposal will not be considered except in compliance with the City's unsolicited quotations policy and procedures.

13. Contract Award Notification

For procurements valued at $100,000 or more, the Purchasing Department shall notify the recommended supplier and the unsuccessful suppliers of the pending award.

14. Supplier Debriefing

For competitive procurement processes valued at $100,000 or more, the Purchasing Department will allow unsuccessful suppliers up to sixty (60) calendar days following the date of the contract award notification to request a debriefing.

15. Bid Dispute Resolution

15.1. Pre-Award Bid Disputes

Any pre-award dispute must be received in writing by the Purchasing Department as soon as possible from the time when the basis for the dispute became known to them, and in cases where a bidder or proponent has been declared non-compliant, no later than five (5) business days after the receipt of such notification.

The Purchasing Department may delay an award, or any interim stage of a procurement, pending the acknowledgement and resolution of any pre-award dispute.

The Purchasing Department, in consultation with the City Solicitor where appropriate, shall conduct a review of the pre-award dispute and determine whether:

a) to dismiss the pre-award dispute;

b) to accept the pre-award dispute and take the appropriate remedial action, including, but not limited to, reinstating the bidder or proponent into the competition or cancelling the call; or

c) to have the CTT Board decide on the award.

15.2. Post-Award Bid Disputes

Post-Award Disputes shall be dealt with by the President & CEO in consultation with the City Solicitor.

16. Construction Services Contract Establishment, Execution and Administration

16.1. Establishing the Construction Services Contract

The construction services contract must be finalized using the form of contract that was released with the solicitation and in a form satisfactory to the City Solicitor, where the contract is in excess of $100,000. Where the solicitation allows for consecutive negotiations or concurrent negotiations of any of the construction services contract terms, the final form of contract shall also be in a form satisfactory to the City Solicitor.

In circumstances where the solicitation permits negotiation of the final form of construction services contract, and a negotiation strategy is used, the construction services contract between CTT and the successful supplier must be defined formally in a signed written contract satisfactory to the City Solicitor before the provision of construction services.

16.2. Construction Services Contract Administration

a) General

Each Department shall manage their respective construction services contracts to ensure all deliverables are properly received, payments are appropriately made, all timelines are met, and any option years to the contract are appropriately exercised.

b) Payments to Suppliers

Departments shall ensure that payments are made in accordance with the provisions of the contract. Furthermore, Departments shall ensure that all invoices contain detailed information sufficient to warrant payment.

c) Construction Services Contract Changes

If a construction services contract change results in a net increase to the contract value previously approved, the Department shall seek approval for the change from the Vice President of Finance and Administration or President & CEO as required by signing thresholds.

d) Contingencies and Risk Management

Departments are responsible for planning for the inclusion of appropriate contingency allowances and for selection and disclosure of appropriate financial means to guarantee the execution and performance of the contract. Such means may include appropriate insurance and indemnity provisions, financial bonds or other forms of security deposits, appropriate provisions for liquidated damages, progress payments and holdbacks. The type and value of insurance coverage and other financial measures will be relevant to the goods, services or construction services being procured.

e) Termination and Assignment Clauses

All construction services contracts shall include appropriate cancellation, rescission, assignment and/or termination clauses.

f) Contractor Performance Evaluation and Disqualification

The President & CEO of CTT, in consultation with the City Solicitor may disqualify a supplier from supplying goods and services to CTT based on performance.

g) Service Contracts

Each Department shall establish clear procedures for managing service contracts, which may include:

i. Establishing clear terms of reference for the assignment. The terms should include objectives, background, scope, constraints, staff responsibilities, tangible deliverables, timing, progress reporting, approval requirements, payment schedule and knowledge transfer requirements.

ii. Establishing expense claim and reimbursement rules compliant with CTT's policies and procedures and ensure all expenses are claimed and reimbursed in accordance with these rules.

iii. Ensuring that expenses are claimed and reimbursed where the contract explicitly provides for reimbursement of expenses.

17. Sale or Disposal of Surplus Materials or Equipment

Funds received for the disposal of surplus materials and equipment will be credited back to the last department having control over the surplus materials or equipment disposed.

If the President & CEO 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 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 thereof.

18. General

18.1. Procurement Records Retention and Access to Information

a) The contents of any bid, proposal or submission 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 and Protection of Privacy Act, 1990*.

b) All procurement documentation, as well as any other pertinent information shall be maintained, retained and only disposed of in accordance with CTT's Records Retention Policy.

18.2. Procurement Review and Audits

The President & CEO shall conduct regular reviews and audits of its procurement activities, procedures and templates to ascertain compliance with this policy.