

Attachment 2 - Proposed Amendments to Procurement Processes Policy

This attachment details proposed amendments to the Procurement Processes Policy. Proposed deletions are indicated by a ~~strike through~~. Proposed additions are indicated by underlining.

Procurement Processes Policy

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1. Purpose

- 1.1. The purpose of this policy is to protect the interests of the City, 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 the City's procurement processes.
- 1.2. This policy supplements Municipal Code Chapter 195, Procurement (the "~~Purchasing~~ Procurement By-law") and other applicable Ontario laws, including trade agreements to which Ontario is a signatory, where applicable to the City's procurement. Therefore, the policies outlined here must be read in conjunction with the ~~Purchasing~~ Procurement By-law and those applicable laws.

2. Interpretation

2.1 Definitions

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

3. Segregation of Duties

- 3.1. The procurement cycle may be divided into seven (7) stages, inclusive of contract management. The roles and responsibilities of those involved in the various stages are further outlined in Appendix A to this policy. The Chief ~~Purchasing Official~~ Procurement Officer may delegate aspects of the procurement duties to other ~~Divisions~~ divisions.
- 3.2. The Chief ~~Purchasing Official~~ Procurement Officer may adopt supplemental procedures to ensure clear segregation of duties for all stages of the procurement cycle for which Purchasing and Materials Management Division is responsible.

4. Approval Authority Authorities

- 4.1. A summary of the approval authority requirements and methodology for the procurement of goods and services under the authority of the Purchasing Procurement By-law is attached as Appendix B to this policy.

5. Competitive Procurement Thresholds

- 5.1. The City shall conduct an open and competitive procurement process where the value of goods and services exceeds ~~\$100,000~~ \$133,800 subject to those exemptions or non-competitive procurement or limited solicitation exceptions set out in the Purchasing Procurement By-law.
- 5.2. The City will not reduce the procurement value or subdivide the procurement into multiple procurements in order to avoid any competitive procurement threshold.
- 5.3. It is recommended that goods and services below the threshold of ~~\$100,000~~ \$133,800 also be competitively procured through at least a limited solicitation, inviting at least three suppliers, subject to any applicable non-competitive procurement exception.

6. Procurement Planning

- 6.1. The Purchasing and Materials Management Division will work with divisions to establish an annual procurement plan that is ~~coordinated with and reflects the~~ based on each division's actual or proposed ~~procurement~~ funding approvals by Council.
- 6.2. The Purchasing and Materials Management Division is responsible for the production of the procurement plan template and its dissemination to all divisions.
- 6.3. Divisions are responsible for developing a business case for each procurement that must include at least the following:
 - a. A clear summary description of goods and/or services to be procured;
 - b. An explanation of the need for the procurement, including confirmation that internal resources are not sufficient, where appropriate; and
 - c. The proposed procurement value and funding source.
- 6.4. The solicitation method shall be recommended by Purchasing and Materials Management Division, in consultation with the ~~Division~~ division, for each procurement.

7. Standard Procurement ~~Solicitation~~ Methods

- 7.1. Information Gathering

7.1.1. The Purchasing and Materials Management Division may assist divisions in the development of requirements for ~~any a~~ 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~~ Requests for Information (RFIs), and ~~requests~~ Requests for Expression of ~~interest~~ Interest (REOIs).

7.1.2. The Purchasing and Materials Management Division shall not use a response from a an RFI or a an REOI to pre-qualify potential suppliers ~~and shall not use the response or~~ to influence the chances of the participating suppliers ~~from becoming~~ to become the successful ~~proponent~~ supplier in any subsequent opportunity solicitation.

7.2. Pre-Qualification for Selective Solicitations

7.2.1. Request for Supplier Qualifications

a. The Chief ~~Purchasing Official~~ Procurement Officer is authorized to determine, ~~in consultation with~~ upon the recommendation of the ~~division head~~ Division Head initiating the solicitation, those suppliers meeting the minimum disclosed standards for technical qualifications and professional competence to respond to future ~~related Solicitation(s)~~ selective solicitations.

b. The Purchasing and Materials Management Division shall use a ~~request for supplier qualification~~ Request for Supplier Qualifications (RFSQ) prior to a solicitation ~~for tenders, quotations, or proposals, where it is deemed that the nature and the~~ complexity of the work involved warrants the time and effort required to pre-select the most experienced and qualified ~~bidders~~ suppliers.

c. The Purchasing and Materials Management Division shall include language that disclaims any contractual commitment or other obligation of the City to call on any supplier to provide goods or services as a result of ~~pre-~~qualification within the RFSQ.

7.2.2. Equipment or Specialty Subcontractors

a. The Chief ~~Purchasing Official's~~ Procurement Officer's authority to prequalify suppliers includes the selection of specified equipment, facilities, specialty subcontractors, and/or materials suppliers, if required in the opinion of the ~~division head~~ Division Head, for incorporation in the technical specifications of any future solicitation. This section is subject to ~~section~~ Section 14 (~~Non-discrimination~~ Non-Discrimination) below.

7.2.3. Establishment of a Multi-Use List for Selective Solicitations

a. In situations where a division, or multiple divisions require the same type of good 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 good or service is required. In such cases, a multi-use list of qualified suppliers may be established for the purpose of selective solicitations.

- b. When using a multi-use list, the City shall allow suppliers to apply at least annually for inclusion in accordance with the ~~notice of intended procurement~~ Notice of Intended Procurement for the RFSQ.
- c. 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~~ the RFSQ shall also disclaim any contractual commitment or other obligation of the City to call on any supplier on the multi-use list to provide goods or services.
- d. 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 ~~solicitation~~ procurements.

7.3. ~~Open~~ Competitive Solicitations Procurements

7.3.1. The Chief ~~Purchasing Official~~ Procurement Officer may use any of the following solicitation methods where the City is required to issue ~~an open~~ a competitive solicitation, subject to any other provisions of the Procurement By-law and the Procurement Policy. These solicitation methods are defined in Section 195-2.1 of the Procurement By-law:

a. Request for Tenders (RFT)

~~A request for tenders may be used to obtain bids for construction services, whenever the Division 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 By-law and the Procurement Processes Policy.~~

b. Request for Quotations (RFQ)

~~A request for quotations may be used to obtain goods and services (other than construction services) whenever the Division 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 By-law and the Procurement Processes Policy.~~

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 By-law and the Procurement Processes Policy.~~

d. Negotiated Request for Proposals (nRFP)

e. 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.~~

8. Posting Notices of Intended Procurement and Solicitation Documents

8.1. The Purchasing and Materials Management Division shall provide a ~~notice of intended procurement~~ Notice of Intended Procurement and make all open competitive procurements readily available for all suppliers through an accessible ~~electronic tendering system~~ Electronic Tendering System.

9. Timelines for Posting Procurements

9.1. The Purchasing and Materials Management Division 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.

9.2. Where no trade agreement applies, the Chief ~~Purchasing Official~~ Procurement Officer will determine the appropriate response time for the solicitation.

10. Use of Fairness Consultants

10.1. Purpose and Mandate

10.1.1. Fairness consultants may be considered for specific procurements to monitor adherence to the City's prescribed procurement process, specifically to the principles of openness, fairness and transparency.

- 10.1.2. Fairness consultants are typically engaged during the development of the solicitation, but may be engaged at any stage of a procurement process including in an external audit function post-award if necessary.
- 10.1.3. Fairness consultants may provide advice to City staff on opportunities to align with the prescribed procurement process more closely as it relates to openness, fairness and transparency and specifically respecting the procurement process for which they have been engaged.
- 10.1.4. It is beyond the scope of fairness consultants to make general recommendations regarding the City's procurement process or public policy objectives.

10.2. Approval

- 10.2.1. Prior to the development of a solicitation, the Division Head will assess and determine whether a fairness consultant is required
- 10.2.2. The Division Head is responsible for assessing the financial impact of engaging a fairness consultant and determining if funding is available.
- 10.2.3. The Chief Procurement Officer can mandate the use of a fairness consultant at any time during the procurement cycle.

10.3. Use of Fairness Consultants

- 10.3.1. Every open competitive procurement will be assessed before the issuance of a solicitation for whether a fairness consultant should be engaged.
- 10.3.2. Documentation must be retained on file to support why a fairness consultant is or is not engaged.

10.4. Reporting

- 10.4.1. Fairness consultants must provide a written report to the Division Head and the Chief Procurement Officer that documents adherence to the City's prescribed procurement process, specifically related to the principles of openness, fairness and transparency, and that highlights any unresolved issues relating to fairness.

11. Bid Receipt and Openings

- 11.1. The Purchasing and Materials Management Division shall ensure that bid submission date and closing time are clearly stated on all solicitations (printed and/or electronic). In addition, the Purchasing and Materials Management Division 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.

- 11.2. The City's Electronic Tendering System will not accept bids after the submission deadline.
- 11.3. For solicitations that are not conducted through the Electronic Tendering System, ~~Bids~~ bids that are received after the closing time shall be returned to suppliers unopened and not evaluated.
- 11.4. The Chief ~~Purchasing Official~~ Procurement Officer will develop procedures with respect to opening bids.

12. Evaluation Criteria and Process Disclosure

12.1. Evaluation Criteria

- 12.1.1. The Project Lead, in consultation with Purchasing and Materials Management Division, ~~in consultation with the division~~ shall develop evaluation criteria, which ~~is~~ are then reviewed and approved by the Chief ~~Purchasing Official~~ Procurement Officer (or their ~~designate~~ delegate) prior to commencement of the competitive ~~solicitation~~ procurement process.
- 12.1.2. All solicitations issued by the Purchasing and Materials Management Division 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.
- 12.1.3. In addition, all solicitations issued will, where appropriate:
- a. Clearly outline mandatory, rated, and other criteria that will be used to evaluate ~~submissions~~ bids, including the weight of each criterion;
 - b. State that ~~submissions~~ bids that do not meet the mandatory criteria will be disqualified;
 - c. Clearly establish the formula for calculating the total price ~~and~~ or cost;
 - d. Ensure that all mandatory and rated criteria comply with the Non-Discrimination section of the ~~by-law~~ Procurement By-law and this policy;
 - e. 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;
 - f. Allocate maximum justifiable weighting to the price ~~and~~ or cost component of the evaluation criteria; and
 - g. 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.

12.2. Negotiation Procedures

- 12.2.1. 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.
- 12.2.2. 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.
- 12.2.3. For RFTs ~~for construction services~~, negotiations are generally not permitted, unless the City is unable to recommend an award within the funding approval of Council. In those circumstances where the solicitation may otherwise be cancelled, the ~~division head~~ Division Head, in consultation with Legal Services, may alternatively negotiate with the supplier with the lowest compliant bid 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 Chief ~~Purchasing Official~~ Procurement Officer.

12.3. Addenda Procedures

- 12.3.1. The Purchasing and Materials Management Division shall use a written addendum to alter any aspect of the solicitation including any evaluation criterion prior to the close of the solicitation. No changes to the evaluation criteria or the respective weightings shall occur after closing.

12.4. Math Errors and Tied Bids Procedures

- 12.4.1. The Chief ~~Purchasing Official~~ Procurement Officer shall establish a procedure for resolving mathematical errors and tied bids for all competitive ~~solicitations~~ procurements.

12.5. Unbalanced Bid Analysis

- 12.5.1. The Chief ~~Purchasing Official~~ Procurement Officer shall establish a procedure for analyzing bids ~~and proposals~~ received to determine if the City has received an unbalanced bid and the actions the City may take in response to a materially unbalanced bid, including rejection.
- 12.5.2. For the purpose of this policy, a materially unbalanced bid means a bid that:
 - a. 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
 - b. The City has determined that the bid may not result in the lowest overall cost to the City even though it may be the lowest submitted bid; or

- c. Is so unbalanced as to be tantamount to allowing an advance payment.

12.6. Major and Minor Bid Irregularities

- 12.6.1. In addition to the discretion provided to the Chief ~~Purchasing Official~~ Procurement Officer to resolve major and minor bid irregularities in the ~~Purchasing~~ Procurement By-law, the Chief ~~Purchasing Official~~ Procurement Officer may establish procedures for resolving common bid irregularities for ~~open competitive solicitations~~ procurements.
- 12.6.2. In the event of any conflict between the evaluation criteria disclosed in a solicitation and the list of common irregularities contained in any ~~purchasing procurement~~ procedure, the evaluation criteria disclosed in the ~~open competitive~~ solicitation shall govern.
- 12.6.3. In exercising judgment with respect to any bid irregularity, the Chief ~~Purchasing Official~~ Procurement Officer shall consider the advice of the City Solicitor.

13. Evaluation Team

- 13.1. ~~Competitive procurement processes~~ procurements require an evaluation team responsible for reviewing and rating the compliant bids in accordance with the criteria disclosed in the solicitation.
- 13.2. The same evaluation team shall be responsible for evaluation of all ~~submissions~~ bids. The evaluation team shall include division staff member(s) with the relevant experience to evaluate ~~bidders or proponent's submissions~~ supplier's bids. 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 divisions may also be included on the evaluation team where appropriate, including complex or high profile projects and those having corporate-wide implications.
- 13.3. Purchasing and Materials Management Division 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.
- 13.4. 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~~ solicitation.

14. Evaluation Criteria Matrix

- 14.1. Each evaluation team member shall independently complete an evaluation criteria matrix, rating ~~or~~ ranking each of the ~~bids submissions~~, bids 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.

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

15. Non-Discrimination

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

15.2. 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 the City's agencies or corporations 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.

16. Non-Competitive Procurement and Limited Solicitations

16.1. Non-Competitive Procurement Process

16.1.1. The Purchasing and Materials Management Division will employ a competitive procurement process wherever possible to achieve optimum-value for public

money. However, where the exemptions or exceptions set out in Article Section 195-7.1 of the Purchasing Procurement By-law apply justifying using a ~~negotiated~~ non-competitive procurement, the City staff accountable for the non-competitive procurement must still be satisfied that ~~the~~ any resulting negotiation process achieves the optimum value for public money, prior to the approval of the non-competitive contract.

16.1.2. 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 Procurement By-law and the Financial Control By-law.

16.2. Unsolicited Quotations or Proposals

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

16.3. Limited Solicitations

16.3.1. ~~The Chief Purchasing Official may use a limited solicitation method, inviting three or more suppliers recommended by the division head, where the value of the procurement does not exceed \$100,000. A limited solicitation includes an informal request for quotation or proposals where the responding suppliers are permitted to submit bids that are revocable up until contract award and execution.~~ A limited solicitation, may be used to solicit competitive bids from three or more suppliers, through an invitational solicitation process, by:

a. ~~The Chief Purchasing Official~~ Chief Procurement Officer where the value of the procurement does not exceed ~~\$100,000~~ \$133,800 or \$500,000, as applicable, under Article 7 of the Procurement By-law. ~~A limited solicitation includes an informal request for quotation or proposals where the responding suppliers are permitted to submit bids that are revocable up until contract award and execution.~~

b. ~~A division head~~ Division Head may also use and award a limited solicitation where the value of the procurement does not exceed ~~\$50,000~~ \$120,000 in accordance with the templates and procedures established by the ~~Chief Purchasing Official~~ Procurement Officer.

16.3.2. A limited solicitation includes an informal request for quotation or proposals where the responding suppliers are permitted to submit bids that are revocable up until contract award and execution.

16.3.3. An informal request for quotation or proposal shall disclaim any bid related claims for failure to award a contract and disclaim any intention to create legal obligations generally connected with formal irrevocable ~~tenders~~ bids. Any award, by the ~~Chief Purchasing Official~~ Procurement Officer, shall be made to

the bid that represents the best value. ~~based on the recommendation of the division head.~~

17. Contract Award Notification

- 17.1. For procurements valued at ~~\$100,000 or more~~ over \$133,800, the Purchasing and Materials Management Division shall notify the recommended supplier and the unsuccessful suppliers of the pending award.
- 17.2. For competitive and non-competitive procurements valued at ~~\$100,000 or more~~ over \$133,800, the Purchasing and Materials Management Division shall promptly post notice of an award online. The notice must be posted after the agreement between the successful supplier and the City ~~was~~ is executed, unless it can be justified as exempt based on confidentiality or other public interest grounds. The content of the notice will comply with applicable law.

18. Supplier Debriefing

- 18.1. For competitive procurement processes valued at ~~\$100,000 or more~~ over \$133,800, the Purchasing and Materials Management Division shall inform all unsuccessful suppliers about their entitlement to a debriefing.
- 18.2. The Purchasing and Materials Management Division will allow unsuccessful suppliers up to sixty (60) calendar days following the date of the contract award notification to request a debriefing.

19. Bid Dispute Resolution

19.1. Pre-Award Bid Disputes

- 19.1.1. Further to ~~Article Section~~ Section 195-10.1 (~~Bid Dispute provisions~~) of the ~~Purchasing Procurement~~ Procurement By-law, any pre-award dispute must be received in writing by the Chief ~~Purchasing Official~~ Procurement Officer, 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~~ supplier has been declared non-compliant, no later than five (5) business days after the receipt of such notification.
- 19.1.2. The Chief ~~Purchasing Official~~ Procurement Officer may delay an award, or any interim stage of a procurement, pending the acknowledgement and resolution of any pre-award dispute.
- 19.1.3. The Chief ~~Purchasing Official~~ Procurement Officer, 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~~ supplier into the competition or cancelling the ~~call~~ solicitation; or
 - c. To have Council decide on the award.
- 19.1.4. The Chief ~~Purchasing Official~~ Procurement Officer may adopt and publish such further procedures as are necessary to ensure a timely review and resolution of pre award bid disputes.

19.2. Post-Award Bid Disputes

- 19.2.1. Post-award bid disputes shall be dealt with in accordance with ~~Article~~ Section 195-10.2 of the ~~Purchasing~~ Procurement By-law and any associated procedures developed by the ~~Treasurer~~ Controller.

20. Contract Establishment, Execution and Administration

20.1. Establishing the Contract

- 20.1.1. The 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~~ \$133,800.
- 20.1.2. Divisions 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, in consultation with ~~Corporate Finance~~ Chief Financial Officer, and ~~Legal Services~~, and Insurance and Risk Management Divisions. 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.
- 20.1.3. All contracts shall include appropriate cancellation, rescission, assignment and/or termination clauses.
- 20.1.4. The term of any contract, and any options to extend the contract, shall be set out in the solicitation including the delegated authority to exercise any option or renewal.
- 20.1.5. Where the solicitation allows for consecutive negotiations or concurrent negotiations of any of the contract terms, the final form of contract shall also be in a form satisfactory to the City Solicitor.
- 20.1.6. In circumstances where the solicitation permits negotiation of the final form of contract, and a negotiation strategy is used, the contract between the City and the successful supplier must be defined formally in a signed written contract

satisfactory to the City Solicitor before the provision of goods or services commences.

20.2. Executing the Contract

20.2.1. The contract between the City and the successful supplier must be formally defined in a signed written contract prior to the provision of ~~supplying~~ goods or services ~~commences~~, subject to exceptions as defined by the City Solicitor. The Chief ~~Purchasing Official~~ Procurement Officer, in consultation with the City Solicitor, shall establish a procedure for the execution of formal contracts for goods and/or services.

20.3. ~~Term of Contract Modifications (including Option Years)~~ Contract Amendments

20.3.1. ~~The term of any contract, and any options to extend the contract, shall be set out in the solicitation including the delegated authority to exercise any option or renewal.~~

20.3.2. Extending the term of contract beyond that set out in the solicitation shall be considered as, and subject to approval as, a non-competitive procurement, where the extension affects the value and/or stated deliverables of procurement.

20.3.3. If a contract change results in a net increase to the contract value previously approved, the division shall seek approval for the change in accordance with the Financial Control By-law. Where there is a material change increasing the scope of work, deliverables or the term of the contract that was not provided for in the original solicitation, the change shall be justified and approved under the authority to award a non-competitive procurement.

20.4. Contract Administration

20.4.1. General

a. Each division shall manage their respective 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.

20.4.2. Payments to Suppliers

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

~~Contract Changes~~

b. ~~If a contract change results in a net increase to the contract value previously approved, the division shall seek approval for the change in accordance with the Financial Control By-law. Where there is a material change increasing the scope of work, deliverables or the term of the~~

~~contract that was not provided for in the original solicitation, the change shall be justified and approved under the authority to award a non-competitive procurement.~~

~~Contingencies and Risk Management~~

- ~~c. Divisions 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, in consultation with Corporate Finance and Legal Services. 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.~~

~~Termination and Assignment Clauses~~

- ~~d. All contracts shall include appropriate cancellation, rescission, assignment and/or termination clauses.~~

20.4.3. Contractor Performance Evaluation and Disqualification

- a. The Chief ~~Purchasing Official~~ Procurement Officer, in consultation with ~~Divisions~~ divisions and the City Solicitor, will develop further procedures related to contractor performance evaluation and disqualification from future procurements based on poor performance.
- b. Project Leads must manage and document ~~Supplier~~ supplier performance in accordance with the terms of the contract, and any performance issues must be addressed.
- c. In addition to any other performance evaluation criteria developed by the City, Project Leads must ~~provide a poor past performance rating for a supplier's less than full performance of the City contract that results from either~~ manage and document, through the performance evaluation process, any instance where a supplier fails to perform a contract as a result of either:
 - 1. A termination of the contract due to the supplier's default; or
 - 2. A conditional amendment of the contract due to the supplier's default.
- d. Project Leads shall maintain records of supplier performance on all applicable contracts, including proof that the Project Lead or delegate has communicated with the supplier regarding the matter before taking any contract performance measure. The recorded information shall be used to:
 - 1. Ensure contract compliance;
 - 2. Supplement a pre-qualification process;

3. Justify rejecting a supplier's bid for similar deliverables; or
 4. As part of the ~~solicitation process for evaluating~~ evaluation of minimum supplier performance and experience criteria for another solicitation.
- e. Such records may also justify the City taking action to suspend a supplier from future solicitations.
- f. To manage disputes with suppliers throughout the life of the contract, the City will include a dispute resolution process in their contracts and in the contractor performance evaluation process.

20.4.4. Service Contracts

- a. Each Division shall establish clear procedures for managing service contracts, which may include:
1. 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.
 2. Establishing expense claim and reimbursement rules compliant with the City's policies and procedures ~~and ensure all expenses are claimed and reimbursed in accordance with these rules.~~
 3. Ensuring that expenses are claimed and reimbursed in accordance with established expense claim and reimbursement rules, where the contract explicitly provides for reimbursement of expenses.

21. Sale or Disposal of Surplus Materials or Equipment

- 21.1. Further to Article 12 of the ~~Purchasing~~ Procurement By-law, funds received for the disposal of surplus materials and equipment will be credited back to the last division having control over the surplus materials or equipment ~~disposed~~.
- 21.2. If the Chief ~~Purchasing Official~~ Procurement Officer and the ~~division head~~ Division Head ~~concerned having control over the surplus materials or equipment~~ are of the opinion that the highest competitive bid for surplus materials or equipment received in accordance to Article 12 of the Procurement Bylaw, response to a ~~call~~ solicitation represents a fair or favourable price, the surplus materials or equipment may be transferred to that ~~bidder~~ supplier upon payment of the price by cash or certified cheque or by cancellation of an equivalent amount of corporate indebtedness toward that ~~bidder~~ supplier at the time of the transfer, or by any combination thereof.

22. Supplier Code of Conduct

- 22.1. General

- 22.1.1. Further to Article 13 of the ~~Purchasing~~ Procurement By-law, the Chief ~~Purchasing Official~~ Procurement Officer shall establish the appropriate procedures and templates with respect to determining compliance with the Supplier Code of Conduct.

22.2. Illegality

22.2.1. General

- a. ~~The following shall supplement Section 195-13.5, Illegality, of the Purchasing By-law.~~

22.2.2. Ineligibility and Pardons

- a. ~~Further to Section 195-13.5 of the Procurement By-law, the Treasurer~~ Controller may reverse a determination of ineligibility ~~in~~ with respect of an offence listed in ~~Article~~ Section 195-13.5(A) of the ~~Purchasing Procurement~~ By-law if the supplier demonstrates that ~~it or its~~ they, an affiliated person, ~~or anyone who has ownership interest in the supplier~~ has been granted an absolute discharge, conditional discharge (and has satisfied the conditions), a pardon or a record suspension.
- b. ~~The Treasurer~~ Controller will also not make a determination of ineligibility in a case where a supplier, an affiliated person, or anyone who has an ownership interest in the supplier has demonstrated ~~demonstrates~~ that it has benefited from a foreign pardon (regarding a foreign offense), which in the ~~Treasurer's~~ Controller's opinion, in consultation with the City Solicitor, is similar to a Canadian pardon.

23. ~~Suspension of suppliers from future solicitations~~ Ineligible and Suspended Suppliers

23.1. General

- 23.1.1. The following shall supplement Article Section 195-13.14 of the ~~Purchasing~~ Procurement By-law and Section ~~19.4.6~~ 20.4.3 of the ~~Procurement Processes~~ Policy, where a supplier is suspended from future solicitations for past poor performance or other violations of the Supplier Code of Conduct.

23.2. Subcontracting

- 23.2.1. A supplier cannot subcontract with ~~a suspended or~~ an ineligible or suspended supplier. A supplier is required to verify the status of their prospective first-tier subcontractors prior to bid ~~submission~~.

23.3. Existing Contracts

- 23.3.1. If a supplier is determined to be ineligible during the performance of a contract, the City may terminate the contract in the public interest.

Suppliers will be afforded an opportunity to show cause as to why the termination should not be exercised.

- 23.3.2. If a supplier is suspended from future awards during the performance of a contract, ~~the~~ any existing contract may not be extended or expanded without the approval of the ~~Treasurer~~ Chief Procurement Officer, in consultation with the City Solicitor.

23.4. Public Interest Exception

- 23.4.1. The ~~Treasurer~~ Chief Procurement Officer may decide that it is in the public interest to approve the use of an ineligible or suspended supplier in the following possible circumstances:

- a. An emergency where delay would be injurious to the public interest;
- b. The supplier is the only person capable of performing the contract;
- c. The contract is essential to maintain sufficient emergency supplies;
or
- d. Not entering into the contract with the supplier would have a significant adverse impact on the health, security, safety, public security or economic or financial well-being of the City.

- 23.4.2. The exception is applied on a case-by case basis by the ~~Treasurer~~ Chief Procurement Officer, in consultation with the Division Head and City Solicitor.

23.5. Notice of Ineligible and Suspended Suppliers

- 23.5.1. The ~~Chief Purchasing Official~~ Procurement Officer shall maintain a list of ~~suspended and ineligible~~ and suspended suppliers and will post such a list electronically.

24. General

24.1. Procurement Records Retention and Access to Information

- 24.1.1. 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*.
- 24.1.2. All procurement documentation, as well as any other pertinent information shall be maintained, retained and only disposed of in accordance with the City's Records Retention By-law and Records Associated with Competitive Bidding Processes.

24.2. Procurement Review and Audits

24.2.1. The Chief ~~Purchasing Official~~ Procurement Officer shall conduct regular reviews and audits of its procurement activities, procedures and templates to ascertain compliance with this policy.

Should you have any questions, please contact the Purchasing and Materials Management Division at supplychain@toronto.ca or call 416-397-4141.

~~Should you have any questions please contact the Purchasing and Materials Management Division. In the event that further interpretation is required, please contact the Manager, Corporate Purchasing Policy & Quality Assurance at 416-392-0387 or Supervisor, Policy, Training & Technology at 416-392-1305.~~

Appendix “A” – Segregation of Duties

Each procurement stage set is out below with the key actions and responsibilities (in brackets) associated with each.

1. Initial Planning and Conditional Approval

- 1.1. Develop procurement plan (Division)
- 1.2. Develop a business case and identify funding source and initial funding approval (Division and Financial Planning)

2. Procurement Streaming and Detailed Planning

- 2.1. Select an appropriate procurement stream and solicitation format (Division with PMMD)
- 2.2. Identify appropriate contract type (Legal Services)
- 2.3. Develop an initial specification (Division)
- 2.4. Develop procurement project plan and strategy (Division with PMMD)

3. Procurement Document Assembly

- 3.1. Develop final technical specifications and scope of work (Division Project Lead)
- 3.2. Develop fee schedules and evaluation criteria (Division Project Lead with PMMD)
- 3.3. Review the insurance, liability and indemnity provisions (Division Project Lead with Insurance and Risk Management Division)
- 3.4. Assemble bid solicitation document (Division Project Lead with PMMD)
- 3.5. Review and approval of solicitation document prior to release (Division Project Lead, PMMD, Legal Services)

4. Competition

- 4.1. Issue solicitation to the market as per the appropriate ~~procurement streams~~ solicitation method (PMMD)
- 4.2. Manage bid receipt and bid opening (PMMD)
- 4.3. Selection of an Evaluation Committee (Division Project Lead with ~~and~~ PMMD)
- 4.4. Coordinate Evaluation Process (~~PMMD with~~ Division Project Lead with PMMD)
- 4.5. Manage pre-award dispute process (PMMD and Legal Services)

5. Contract Approval Process and Formalization

- 5.1. Supplier award recommendation report (Division Head)
- 5.2. Preliminary review and approval of award recommendation (PMMD and Legal Services)
- 5.3. Final review and award (Approval Authority under the Purchasing Procurement By-law)
- 5.4. Negotiations, (where applicable) (Division and Legal Services)
- 5.5. Final contract preparation and execution (Legal Services and Division)
- 5.6. Issue Purchase Order (PMMD)

6. Post-Award Process

- 6.1. Manage Debriefing Process (PMMD and Division)
- 6.2. Manage post-award dispute process (PMMD and Legal Services)

7. Contract Management

- 7.1. Manage delivery of the contract (Division ~~project lead~~ Project Lead)
- 7.2. Evaluation of supplier performance (Division ~~project lead~~ Project Lead)
- 7.3. Manage Supplier Ineligibility and Suspension Process (PMMD, Legal Services, Controller)

Procurement Stage:	Action(s):	Responsibility:
1. Initial Planning and Conditional Approval	1. Develop Procurement Plan 2. Develop a business case and identify funding source and initial funding approval	1. Division 2. Division and Financial Planning
2. Procurement Streaming and Detailed Planning	1. Select an appropriate procurement stream and solicitation format 2. Identify appropriate contract type	1. Division with PMMD 2. Legal Services 3. Division

	<ol style="list-style-type: none"> 3. Develop initial specification 4. Develop procurement project plan and strategy 	<ol style="list-style-type: none"> 4. Division with PMMD
3. Procurement Document Assembly	<ol style="list-style-type: none"> 1. Develop final technical specifications and scope of work 2. Develop fee schedules and evaluation criteria 3. Assemble bid solicitation document 4. Review the insurance, liability and indemnity provisions 5. Review and approval of solicitation document prior to release 	<ol style="list-style-type: none"> 1. Division Project Lead 2. Division Project Lead with PMMD 3. PMMD with Division Project Lead 4. Division Project Lead with Insurance and Risk Management Division 5. Division Project Lead, PMMD, Legal Services
4. Competition	<ol style="list-style-type: none"> 1. Issue solicitation to the market as per the appropriate procurement streams solicitation method 2. Manage bid receipt and bid opening 3. Selection of an Evaluation Committee 4. Coordinate Evaluation Process 5. Manage pre-award dispute process 	<ol style="list-style-type: none"> 1. PMMD 2. PMMD 3. Division Project Lead with and PMMD 4. PMMD with Division Project Lead with PMMD 5. PMMD and Legal Services

5. Contract Approval Process and Formalization	<ol style="list-style-type: none"> 1. Supplier award recommendation report 2. Preliminary review and approval of award recommendation 3. Final review and award 4. Negotiations (where applicable) 5. Final contract preparation and execution 6. Issue Purchase Order 	<ol style="list-style-type: none"> 1. Division Head 2. PMMD and Legal Services 3. Approval authority under the Purchasing Procurement By-law 4. Division and Legal Services 5. Legal Services and Division 6. PMMD
6. Post-Award Process	<ol style="list-style-type: none"> 1. Manage Debriefing Process 2. Manage post-award dispute process 	<ol style="list-style-type: none"> 1. PMMD and Division 2. PMMD and Legal Services
7. Contract Management	<ol style="list-style-type: none"> 1. Manage delivery of the contract 2. Evaluations of supplier performance 3. Manage Supplier Ineligibility and Suspension Process 	<ol style="list-style-type: none"> 1. Division project lead 2. Division project lead 3. PMMD, and Legal Services, Controller

Appendix “B” – Approval Authorities Table

Competitive Procurement – ~~Invitational Solicitation Award vs Open Solicitation~~

- ~~Division Heads: \$3,000 to \$50,000-\$120,000~~ in accordance with Divisional Purchasing Order Procedure and funding approval
- ~~Purchasing and Materials Management Division Chief Procurement Officer : \$3,000 up to \$100,000-\$133,800 or \$500,000~~ in accordance with the procedure for Invitational Solicitation Process or if the requirements are such that an open solicitation is not appropriate or in the best interest of the City ~~in accordance with the Limited Solicitation Procedure.~~

Competitive Procurement – Open Competitive Award Authority

- ~~Division Heads: Up to \$50,000-\$120,000~~ in accordance with Divisional Purchasing Order Procedure and with funding approval

Chief Procurement Officer Purchasing Official: Up to \$500,000 with:

- Award to the supplier meeting specifications and providing best value as defined in the Ssolicitation;

- Solicitation conducted in a fair and transparent manner;
- Funding approval; and
- Term of contract does not exceed 5 years including option ~~years~~ periods or the projected term of capital funding approved by Council

Bid Award Panel: Up to \$20,000,000 with

- Award to the supplier meeting specifications and providing best value as defined in the ~~S~~solicitation;
- Solicitation conducted in a fair and transparent manner;
- Funding approval; and
- Term of contract does not exceed 5 years including option ~~years~~ periods or the projected term of capital funding approved by Council

Bid Award Panel – Extended: Over \$20,000,000 with:

- Award to the supplier meeting specifications and providing best value as defined in the ~~S~~solicitation;
- Solicitation conducted in a fair and transparent manner;
- Funding approval;
- Term of contract does not exceed 5 years including option ~~years~~ periods or the projected term of capital funding approved by Council; and
- During Council Summer Recess, Election Recess, Labour Disruption or if Standing Committee meeting cancelled and not another Council meeting within a week.

Standing Committee: Over \$20,000,000 with:

- Award to the supplier meeting specifications and providing best value as defined in the solicitation;
- Solicitation conducted in a fair and transparent manner;
- Funding approval; and
- Term of contract does not exceed 5 years including option periods or the projected term of capital funding approved by Council

Council: Any Dollar Value where:

- Award is not to the supplier meeting specifications or may not represent best value as defined in the ~~S~~solicitation;
- No funding approval or insufficient funding approval based on the value of the recommended award;
- Term of contract exceeds 5 years including option ~~years~~ periods or the projected term of capital funding approved by Council;
- Where the Chief Procurement Officer ~~Purchasing Official~~, in consultation with the City Solicitor, determine that given the material risk of the award it should be ~~done~~ made by Council;

- Where the Chief Procurement Officer ~~Purchasing Official~~ and the Division Head believe Council should make the award; or
- Council directs staff to report to Council for the award approval

Non-Competitive Procurement – Award Authority

Division Heads without the Chief Procurement Officer ~~Purchasing Official~~: Up to \$50,000 where:

- in accordance with the Non-Competitive Exceptions in Chapter 195;
- in accordance with the Non-Competitive Procurement Process and Divisional Purchase Order Procedure; and
- Term of contract does not exceed 5 years including option years periods or the projected Tterm of capital funding approved by Council.

Division Heads with the Chief Procurement Officer ~~Purchasing Official~~: \$50,000 up to \$500,000 where:

- in accordance with the Non-Competitive Exceptions in Chapter 195;
- in accordance with the Non-Competitive Procurement Process; and
- Term of contract does not exceed 5 years including option years periods or the projected term of capital funding approved by Council.

City Council: \$500,000 and above where:

- in accordance with the Non-Competitive Exceptions in Chapter 195;
- in accordance with the Non-Competitive Procurement Process; and
- Term of contract exceeds 5 years including option years periods or the projected term of capital funding approved by Council.

Competitive Procurement – Invitational Solicitation Award vs Open Solicitation	
<u>Level</u>	<u>Conditions</u>
Division Heads	\$3,000 to \$50,000 \$120,000 in accordance with Divisional Purchaseing Order Procedure and funding approval
Purchasing and Materials Management Division Chief Procurement Officer	\$3,000 up to \$100,000 \$133,800 or \$500,000 in accordance with the procedure for Invitational Solicitation Process or if the requirements are such that an open solicitation is not appropriate or in the best interest of the City in accordance with the Limited Solicitation Procedure.
Competitive Procurement – Open Competitive Award Authority	
<u>Level</u>	<u>Conditions</u>
Division Heads	Up to \$50,000 \$120,000 in accordance with Divisional Purchasing Order Procedure and with funding approval

<p>Chief Procurement Officer Purchasing Official</p>	<p>Up to \$500,000 with</p> <ul style="list-style-type: none"> ▪ Award to the supplier meeting specifications and providing best value as defined in the Solicitation; ▪ Solicitation conducted in a fair and transparent manner; ▪ Funding approval; and ▪ Term of contract does not exceed 5 years including option years periods or the projected term of capital funding approved by Council
<p>Bid Award Panel</p>	<p>Up to \$20,000,000 with</p> <ul style="list-style-type: none"> ▪ Award to the supplier meeting specifications and providing best value as defined in the Solicitation; ▪ Solicitation conducted in a fair and transparent manner; ▪ Funding approval; and ▪ Term of contract does not exceed 5 years including option years periods or the projected term of capital funding approved by Council
<p>Bid Award Panel – Extended</p>	<p>Over \$20,000,000 with:</p> <ul style="list-style-type: none"> ▪ Award to the supplier meeting specifications and providing best value as defined in the Solicitation; ▪ Solicitation conducted in a fair and transparent manner; ▪ Funding approval; ▪ Term of contract does not exceed 5 years including option years periods or the projected term of capital funding approved by Council; and ▪ During Council Summer Recess, Election Recess, Labour Disruption or if Standing Committee meeting cancelled and not another Council meeting within a week
<p>Standing Committee</p>	<p>Over \$20,000,000 with:</p> <ul style="list-style-type: none"> ▪ Award to the supplier meeting specifications and providing best value as defined in the solicitation; ▪ Solicitation conducted in a fair and transparent manner; ▪ Funding approval; and ▪ Term of contract does not exceed 5 years including option periods or the

	projected term of capital funding approved by Council
Council	<p>Any Dollar Value where:</p> <ul style="list-style-type: none"> ▪ Award is not to the supplier meeting specifications or may not represent best value as defined in the Solicitation; ▪ No funding approval or insufficient funding approval based on the value of the recommended award; ▪ Term of contract exceeds 5 years including option years periods or the projected term of capital funding approved by Council; ▪ Where the Chief Procurement Officer Purchasing Official, in consultation with the City Solicitor, determine that given the material risk of the award it should be done made by Council; ▪ Where the Chief Procurement Officer Purchasing Official and the Division Head believe Council should make the award; or ▪ Council directs staff to report to Council for the award approval
Non-Competitive Procurement – Award Authority	
<u>Level</u>	<u>Conditions</u>
Division Heads without the Chief Procurement Officer Purchasing Official	<p>Up to \$50,000 where:</p> <ul style="list-style-type: none"> ▪ in accordance with the Non-Competitive Exceptions in Chapter 195; ▪ in accordance with the Non-Competitive Procurement Process and Divisional Purchase Order Procedure; and ▪ Term of contract does not exceed 5 years including option years periods or the projected term of capital funding approved by Council.
Division Heads with the Chief Procurement Officer Purchasing Official	<p>\$50,000 up to \$500,000 where:</p> <ul style="list-style-type: none"> ▪ in accordance with the Non-Competitive Exceptions in Chapter 195; ▪ in accordance with the Non-Competitive Procurement Process; and ▪ Term of contract does not exceed 5 years including option years periods or

	<p>the projected term of capital funding approved by Council.</p>
<p>City Council</p>	<p>\$500,000 and above where:</p> <ul style="list-style-type: none"> ▪ in accordance with the Non-Competitive Exceptions in Chapter 195; ▪ in accordance with the Non-Competitive Procurement Process; and ▪ Term of contract exceeds 5 years including option years periods or the projected term of capital funding approved by Council.