

PURPOSE

1.0

To protect the interests of the taxpayers of the City of Toronto by reserving the right to the City to reject an offer to supply goods and/or services through the City's procurement processes where the City determines that the person making the offer is in any way indebted to the City and in its sole discretion is of the opinion that it is in the City's best interests that the offer be rejected.

To make it clear to persons responding to a call or request from the City that the Treasurer may choose to exercise any legal or equitable right of setoff against any person who becomes indebted to the City during the provision of their services and may re-direct payments to otherwise due to such person towards repayment of outstanding amounts owed to the City.

**Note: 1. Adopted by Council at its meeting held on July 20, 21, 22, 2004, Report No. 5, Clause 8, Administration Committee.
2. Revised by City Council at its meeting of June 14, 15 & 16, 2005, Report No. 5, Clause 3.**

POLICY

2.0 Application

This policy shall apply to all calls and proposals issued by the City of Toronto's Purchasing and Materials Management Division (PMMD).

3.0 Definitions

"bid" means a formal price response to a call issued by the City;

"bidder" means any person submitting a competitive bid in response to a call by the City;

"call" means a solicitation from the City to external suppliers or providers to submit a tender or a quotation;

"controlling interest" means the interest that a person has in a corporation when the person beneficially owns, directly or indirectly, or exercises control or direction over, equity shares of the corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding;

"debtors watch list" means a list of persons and or companies who are indebted to the City;

"indebted" includes *but is not limited to* unpaid taxes, outstanding claims, judgements or executions, arrears of rent and any interest and penalty thereon owing by a person to the City;

"parent" means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child;

"person" shall include any individual, sole proprietorship, partnership, corporation or other entity with the legal capacity to contract;

"procurement processes" includes any call or request issued by PMMD pursuant to Chapter 195, Purchasing, of the City of Toronto Municipal Code;

"related person" means a parent or the spouse or any child of the person or any person or entity having an indirect pecuniary interest as set out in section 4.0;

"request" means a solicitation from the City to external suppliers or providers to submit a proposal;

"senior officer" means the chair or any vice-chair of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a corporation or any other person who performs functions for the corporation similar to those normally performed by a person occupying any such office;

"spouse" means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage.

4.0 Indirect pecuniary interest

A person has an indirect pecuniary interest in any matter in which another person is concerned, if:

- (a) the person or his or her nominee,
 - (i) is a shareholder in, or a director or senior officer of the other person, being a corporation that does not offer its securities to the public;
 - (ii) has a controlling interest in or is a director or senior officer of the other person, being a corporation that offers its securities to the public, or
 - (iii) is a member of the other person; or
- (b) the person is a partner of the other person or is in the employment of the other person.

5.0 Right to Reject

It shall be the policy of the City of Toronto that in any procurement of goods and services by the City, the City reserves the right to reject an offer to supply goods and/or services presented in response to the City's procurement processes where the City determines that the person making the offer is in any way indebted to the City and in its sole discretion is of the opinion that it is in the City's best interests that the offer be rejected. For the purpose of this section 5.0, "person making the offer" includes the person actually making the offer, whether as agent or principal, a person on whose behalf the offer is made and any related person.

5.1 Process

All calls or proposals issued by PMMD on behalf of City Divisions shall include a copy of this policy.

5.2 Declaration

PMMD shall be entitled to rely on the contents of the Debtors Watch List in making a determination of disqualification.

6.0 Determination of Disqualification

The City Manager or designate shall have, in consultation with the Treasurer, the City Solicitor and the Division Head on whose behalf PMMD has issued a procurement process, the sole discretion to reject a bid on the basis of this policy in the best interests of the City. The Guidelines in Appendix 'A', attached, will be used by the City Manager in exercising her discretion under the policy.

NOTE: On July 23, 2007 the City Manager delegated to the Treasurer, the authority to make the determination for rejection as described herein above in Section 6.0 and in Appendix A of this policy

6.1 Notification of Rejection

Once a decision to reject a bid has been made by the City under sections 5.0 and 6.0 hereof, PMMD shall forthwith notify the affected person of the decision by way of a notice in writing delivered to the address provided by the person in the particular procurement process from which that the bid has been rejected, provided, however, that any such rejection is not conditional upon the delivery or receipt of such notice in writing.

7.0 Set-Off

The Treasurer, in consultation with the City Solicitor, may choose to exercise any legal or equitable right of set-off against any person who becomes indebted to the City during the provision of their services and may re-direct payments otherwise due to such person towards repayment of outstanding amounts owed to the City.

8.0

Where a disqualified person is otherwise the lowest bidder whose bid meets the specifications and requirements set out in the call or request, such bid will be referred to a standing committee of council in accordance with the provisions of Schedule 195, Purchasing, of the Municipal Code.

ATTACHMENTS

APPENDIX A – GUIDELINES IN RESPECT OF THE CITY'S RIGHT TO REJECT DEBTORS AND SET OFF POLICY

CONTACT

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 392-0387 or Supervisor, Policy, Training & Technology at 392-1305

Appendix A

Guidelines in Respect of the City's Right to Reject Debtors and Set Off Policy (The "Policy")

The following are guidelines for the City Manager to consider when, in consultation with the City Solicitor, the Treasurer and the Division Head, to determines whether to exercise her discretion to reject a debtor under the Policy. The City Manager may consider any individual guideline or any combination of guidelines to determine the application of the Policy.

(1) Size of the indebtedness

The policy should only be applied in situations where the amount of the indebtedness is significant in relationship to the contract under consideration.

The suggested size of the indebtedness that would trigger possible application of the policy is 10% of the amount bid.

(2) Age of the indebtedness

The policy should be applied in situations where the age of the indebtedness is significant.

The suggested age of the indebtedness that would trigger possible application of the policy is 90 days overdue or more.

The policy may also be applied where the debtor has a chronic pattern of late payment.

(3) The nature of the indebtedness

Where the nature of the indebtedness is a legal claim or a claim to rectify previous deficiencies, the policy should be applied in those circumstances where the claim is significant in size (see 1.)

If the contractor in question has a track record of settling cross claims in a manner acceptable to staff, it would be inappropriate to use the policy.

It may be quite appropriate to exercise the policy with a debtor that has a chronically poor record with the City with respect to payment of accounts or where the debtor has a chronic history of claims.

(4) Other Avenues Available to Correct the Indebtedness

The denial of City business is one of many avenues that the City has to encourage the payment of outstanding accounts. In a situation where the City has other strong collection tools available such as the disconnection of water or

the tax sale of a property, it may be in the best interests of the City to award a contract if the bid is attractive enough and the risk of not collecting on outstanding accounts is low.

(5) The Spread between the Debtors Low Bid and the Next Lowest Bid

In circumstances where the response submitted by the debtor is so attractive as compared to the next ranked response that the benefit of the award significantly outweighs the debt to the City, it may not be appropriate to decline the award. Care must be taken, however, in situations where the indebtedness is in the form of past claims for poor workmanship. In these situations, a low bid may indicate that the pattern of poor workmanship and resulting claims may continue.