



## STAFF REPORT ACTION REQUIRED

### Purchasing Decisions Under the Policy on Donations to the City for Community Benefits

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| <b>Date:</b>             | January 9, 2009  |
| <b>To:</b>               | Executive Committee                                    |
| <b>From:</b>             | Acting Deputy City Manager and Chief Financial Officer |
| <b>Wards:</b>            | All  |
| <b>Reference Number:</b> | P:/2009/Internal Services/pmmd/ex09002pmmd (AFS 7991)  |

#### SUMMARY

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The purpose of this report is to respond to a request by the Executive Committee to:

- a) establish a protocol for investigating complaints with respect to the sections of the Policy on Donations to the City for Community Benefits (the "Policy") dealing with procurement decisions; and
- b) report on appropriate penalties against suppliers that violate the Policy.

Where complaints are made with respect to the sections of the Policy dealing with procurement decisions, the Purchasing and Materials Management Division ("PMMD"), the Toronto Office of Partnerships ("TOP") and the Accounting Services Division ("Accounting Services") will work together to investigate the complaint and determine whether a supplier is in violation of the Policy.

It is recommended that the penalty for violation of the Policy in respect of procurement decisions be consistent with the penalty for violation of the rules with respect to communications by vendors during a procurement process under the City's Procurement Processes Policy. The penalty will be disqualification from the procurement call and/or future calls at the discretion of Council. As in accordance with the Procurement Processes Policy, recommendations with respect to penalizing a vendor found to be in violation of the Policy will be made to Council on a case by case basis.

## **RECOMMENDATIONS**

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### **The Acting Deputy City Manager and Chief Financial Office recommends that:**

1. The Policy on Donations to the City for Community Benefits be amended to include the following language at the end of section 1.7:

Any bidder or proponent found to be in violation of this policy may be subject to disqualification from the procurement process or future procurement processes at the discretion of City Council.
2. The Director of Purchasing and Materials Management be directed to make potential bidders and proponents aware of the Policy on Donations to the City for Community Benefits, as amended, by ensuring that the Policy is included in the City's Policies and Legislation set out on the City of Toronto website and referenced in all call documents issued by the City.

### **Financial Impact**

No financial impact will result from the adoption of the recommendations in this report.

### **DECISION HISTORY**

At its meeting on May 26 and 27, 2008, City Council, in considering a staff report to the Executive Committee "Delegation of Authority to Receive and Spend Donations to the City for Community Benefits" (April 18, 2008), adopted the following motion:

That:

1. the Deputy City Manager and Chief Financial Officer be requested to establish a protocol for investigating complaints under the "procurement decisions" section of this policy and report to Council on this matter through the Executive Committee; and
2. the Deputy City Manager and Chief Financial Officer be requested to consider and report on appropriate penalties to be incorporated into the policy against suppliers that violate the policy.

Link to "Delegation of Authority to Receive and Spend Donations to the City for Community Benefits" (April 18, 2008):

<http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-12540.pdf>

Link to City Council Decision Document for May 26 and 27, 2008:

## **ISSUE BACKGROUND**

The existing Policy, as adopted by City Council at its meeting of May 26 and 27, 2008, deals with ensuring that donations do not interfere with the City's independence in decision making particularly around planning and procurement.

Under the Policy, donors are required to make a written declaration that a donation to the City or an agency, board or commission for community benefits is not concurrent with an approval or procurement process in which they, or their organization or company if applicable, are involved. Copies of all Donor Declaration Forms submitted to the various Divisions are forwarded to and retained by Accounting Services.

The following sections of the Policy deal specifically with procurement decisions and the blackout period in the procurement process during which potential bidders or proponents are not permitted to discuss or offer voluntary donations for community benefits:

- 1.6 Voluntary donations for community benefits may not be solicited and offers may not be made by or accepted from a bidder, proponent or applicant to a procurement, or their representative, concurrent to the procurement solicitation and award process.
- 1.7 There is a blackout period in procurement decision making processes during which discussions about voluntary donations for community benefits are not permitted and voluntary donations may not be offered, solicited or accepted. The blackout period for procurements commences when the request or call for a bid, quote, proposal, etc. is formally issued, and it ends at the time the procurement is awarded.

## **COMMENTS**

### **Investigation of Complaints:**

TOP is responsible for implementing, managing and ensuring adherence to the Policy. PMMD is responsible for the City's procurement processes and handling all vendor complaints in respect of a procurement process. The City's Procurement Processes Policy, as adopted by Council, provides that all vendor complaints, whether addressed to elected officials or staff, are to be referred to the Chief Purchasing Official for resolution. Therefore, there is already a requirement in place that any complaints made under the procurement decisions section of the Policy are to be referred to the Chief Purchasing Official.

If a complaint is received, PMMD will work with TOP and Accounting Services to investigate the complaint. Essentially, the investigation will involve determining whether a bidder or proponent offered or made a donation during the blackout period. To

determine whether a donation was made by a bidder or proponent, PMMD can check the Donor Declaration Forms that are submitted by all donors and retained by Accounting Services. If the complaint is in respect of an offer or discussion of a donation that was not ultimately accepted by staff, there may not be a Donor Declaration Form on file. In that case, based on the information provided with the complaint, PMMD staff will work with TOP and consult with any relevant Division or elected official to determine if such an offer or discussion took place.

### **Penalties for Violation of the Policy:**

The Procurement Process Policy also provides for a blackout period, from the time of the issuance of a call until the time of award, during which vendors or their representatives are prohibited from communicating with any City official, member of Council or City staff other than the Chief Purchasing Official or his designate named in the call document. Under the Procurement Process Policy, the penalty for violation of the rules with respect to the blackout period is disqualification from the procurement call and/or future calls in the discretion of Council.

It is recommended that the penalty for violation of the blackout period rules in respect of donations be consistent with the Procurement Processes Policy. If the investigation of a complaint determines that a violation has taken place, PMMD will report to Council on the circumstances of the violation and make recommendations with respect to the disqualification of the vendor from the current procurement process or future procurement processes.

### **CONTACT**

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### **SIGNATURE**

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