



**STAFF REPORT
ACTION REQUIRED**

**Amendments to the Purchasing By-law and
Procurement Processes Policy**

Date:	May 30, 2016
To:	Government Management Committee
From:	Treasurer
Wards:	All Wards
Reference Number:	P:\2016\Internal Services\PMMD\gm16004pmmd (AFS16305)

SUMMARY

This report recommends changes to the City's Purchasing By-law (Toronto Municipal Code, Chapter 195, Purchasing) and the Procurement Processes Policy. The changes are being recommended in order for the City of Toronto to:

- adopt a Supplier Code of Conduct;
- be ready for upcoming trade agreements, such as the Comprehensive Economic Trade Agreement (CETA);
- align with the Province of Ontario's Broader Public Sector Procurement Directive as a leading practice; and
- improve the clarity of the Purchasing By-law.

This is one of four major transformational projects for the Purchasing and Materials Management Division (PMMD) in 2016. The other projects are:

- the Social Procurement Program, adopted by Council in May 2016
- the Supply Chain Management Transformation Project, which will transform the use of technology in PMMD and across the organization; and
- the PMMD Program Review, which will examine the service delivery and organizational structure of PMMD in order to provide for a more strategic role in sourcing the City's goods and services by introducing category management, scheduled for reporting to Government Management Committee in Q4 2016.

RECOMMENDATIONS

The Treasurer recommends that:

1. City Council adopt the proposed new Chapter 195, Purchasing, based on the summary set out in Attachment 1 of this report, and repeal the existing Chapter 195, effective January 1, 2017.
2. City Council adopt the proposed new Procurement Processes Policy, as set out in Attachment 2 of this report and repeal the existing Procurement Processes Policy, effective January 1, 2017.
3. City Council adopt the proposed revisions to the Access to Councillors during a Procurement Process Policy as set out in Attachment 3, effective January 1, 2017.
4. City Council adopt the proposed revisions to the Social Procurement Policy as set out in Attachment 4, effective January 1, 2017.
5. City Council repeal the Policy on "Excluding Bids from External Parties Involved in the Preparation or Development of a Specific Call/Request" and the Policy on "Restrictions on the Hiring and use of Former City of Toronto Management Employees for City Contracts" based on changes to the Chapter 195, Purchasing as identified in Attachment 1, effective January 1, 2017.
6. City Council authorize the City Solicitor to prepare and introduce in Council any bills required to enact the new Chapter 195, Purchasing, substantially based on Attachment 1.

Financial Impact

There are no financial implications from this report.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

IMPLEMENTATION POINTS

With Council approval of the new Purchasing By-law and the Procurement Processes Policy, PMMD staff, in conjunction with Legal Services, will work to revise existing procedures and create new procedures to reflect the changes. PMMD will then conduct the necessary training for City staff and suppliers to ensure the changes are understood.

The procedures will be written and revised prior to January 1, 2017, when the By-law and policy come into effect.

City staff will review the Final Report of the Charbonneau Commission, once translated, and report to Council on any further measures to be taken to address the concerns raised by the Charbonneau Commission.

DECISION HISTORY

Chapter 195, Toronto Municipal Code and Procurement Processes Policy

At its meeting on July 21 and 22, 2004, City Council adopted a revised Chapter 195 of the Toronto Municipal Code and the Procurement Processes Policy, as contained in Report No. 5, Clause 7 of the Administration Committee entitled "Procurement Processes Review Implementation – Consolidated Report." This report consolidated and established new procurement policies and procedures that met City operational needs cost-effectively and as expeditiously as possible; while ensuring effective controls, accountability and reporting mechanisms to Council.

<http://www.toronto.ca/legdocs/2004/agendas/council/cc040720/adm5rpt/cl007.pdf>

At its meeting on April 12, 13 and 14, 2005, City Council adopted amendments to Chapter 195 of the Toronto Municipal Code, as contained in Report No. 4, Clause 40 of the Policy and Finance Committee entitled "Authority to Update City By-laws to Reflect Administrative Re-organization, Statutory Changes and to Make Other Technical Changes." This report amended Chapter 195 to reflect the reorganization of the City's administrative structure as approved by City Council at its meeting on November 30, December 1 and 2, 2004.

<http://www.toronto.ca/legdocs/2005/agendas/council/cc050412/pof4rpt/cl040.pdf>

At its meeting on September 25, 26 and 27, 2006, City Council amended the Procurement Processes Policy, Report No. 6, Clause 6. This amendment corrected redundancies and/or inconsistencies that had been identified by recommending the amendment or repeal of certain policies.

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060925/cofa.pdf>

At its meeting on April 23 and 24, 2007, City Council adopted amendments to Chapter 195 of the Toronto Municipal Code, as contained in Report No. 3, Clause 3.12 of the Government Management Committee entitled "Criteria for Procurement Awards made by the Standing Committee." This report amended Chapter 195 to modify the monetary limit from \$5 million to \$20 million in relation to the authority of the Bid Committee.

<http://www.toronto.ca/legdocs/mmms/2007/cc/decisions/2007-04-23-cc07-dd.pdf>

At its meeting on December 11, 12 and 13, 2007, City Council adopted amendments to Chapter 195 of the Toronto Municipal Code, as contained in Report No. 10, Clause GM10.5 of the Government Management Committee entitled "Updates to the Financial Control, Purchasing and Signing Authority Bylaws." This report amended Chapter 195 to i) reflect the new governance structure adopted by City Council at its meeting held on June 27, 28 and 29, 2006; and, ii) accommodate the addition of three new accountability officers of Council (Integrity Commissioner, Ombudsman and Lobbyist Registrar)

<http://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-12-11-cc15-dd.pdf>

At its meeting on September 30 and October 1, 2009, City Council adopted amendments to Chapter 195 of the Toronto Municipal Code, as contained in the report entitled "Purchasing By-law Review;" Attachment 1 of agenda item GM24.5. The report summarized the results of the five year review process and recommended changes to Chapter 195 of the Toronto Municipal Code, and a procurement related change to Chapter 71 of the Toronto Municipal Code.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.GM24.5>
<http://www.toronto.ca/legdocs/mmis/2009/gm/bgrd/backgroundfile-22285.pdf>

Comprehensive Economic and Trade Agreement

At its meeting on March 5, 2012, City Council requested that the federal government protect the City's service provision flexibility, ability to create jobs and protect the environment from limitations in CETA. City Council also requested discussions with the provincial government on procurement thresholds, local procurement interests and dispute resolution mechanisms in CETA, as well as an exemption for the City of Toronto, and other sub-national public organizations, from the Agreement.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX16.2>

At its meeting on November 13, 2013, City Council requested that the Government of Ontario brief and consult with the City of Toronto on the CETA, as well as allow City Council to debate and vote on the terms of the CETA as they relate to the City of Toronto before provincial approval of the Agreement.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.MM41.14>

The Charbonneau Commission

At its meeting on April 1, 2, and 3, 2014, City Council adopted the motion requesting the Director, Purchasing and Materials Management to review the Charbonneau Commission Report to determine whether recommendations pertaining to establishing measures to identify, reduce and prevent collusion and corruption in the awarding and managing of public contracts in the construction industry have relevance to the City of Toronto. Further, City Council requested the Director, Purchasing and Materials Management to report to the Government Management Committee on the findings and any policies and protocols arising from the Charbonneau Commission Report.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.AU14.4>

ISSUE BACKGROUND

Purchasing By-law

The Purchasing By-law, with Toronto Municipal Code Chapter 71, Financial Control, provide the overall framework for proper and effective procurement processes in the City that meet divisional operational needs, while ensuring effective financial controls and

accountability. More specifically, the Purchasing By-law, with the Procurement Processes Policy outline:

- the authority and duties of the Chief Purchasing Official and other City officials
- the authority of the Bid Committee (to be renamed to the Bid Award Panel), Standing Committees and Council
- the process for calling of bids and awarding of contracts
- the conditions under which goods and services can be sourced without a competitive process; bid disqualification, and
- dispute resolution.

Section 195-5(M) of the Purchasing By-law requires the Chief Purchasing Official to undertake a comprehensive review of the Purchasing By-law and all policies affecting the procurement process every five years. While significant amendments have been made to the Purchasing By-law in 2005, 2007 and 2009, the basic structure of the current By-law was enacted in 2004, prior to the release of the report of Toronto Computer Leasing Inquiry (Bellamy Inquiry) in 2005. This report recommends a comprehensive overhaul to the Purchasing By-law and a new Procurement Processes Policy that:

- clarify the existing delegated authorities,
- prepare for the upcoming CETA
- align with the Province's Broader Public Sector (BPS) Procurement Directive, and
- codifies the ethical standards expected of suppliers doing business with the City, in line with what was recommended by the Bellamy Inquiry and further highlighted by the Charbonneau Commission.

Comprehensive Economic and Trade Agreement (CETA)

The Government of Canada and the European Union (EU) are in the final stages of approving the Comprehensive Economic and Trade Agreement (CETA), with federal officials indicating that CETA will be fully ratified by early 2017. In order for CETA to come into effect, the Government of Canada must pass legislation to implement CETA. The EU state governments must each follow a similar ratification process. As described in previous reports, CETA is considered to be the first international trade agreement that specifically speaks to government procurement at the municipal level.

The application of CETA to the City's procurement will depend on the value of the procurement being issued. CETA provisions will apply where ("CETA Covered Procurements"):

- the procurement of goods and services is above \$340,600 CAD; and
- the procurement of construction services is above \$8.5 million CAD.

The threshold amounts noted above will change periodically due to changes in the exchange rate between the Canadian dollar and the Euro. The changes happen on a bi-yearly basis, with the next update January 1, 2018.

While the exact date that CETA will come into effect remains uncertain, the proposed revisions to the Purchasing By-law and the Procurement Process Policy are overdue and intended to prepare the City for new government procurement standards based on the current text of CETA as provided by the Government of Canada.

Trade and Cooperation Agreement between Ontario and Québec (OQTCA)

On November 21, 2014, the Province of Ontario and Province of Québec adopted a memorandum of understanding aimed at renegotiating the OQTCA Procurement Chapter by April 30, 2015. On May 11, 2015, the Province of Ontario announced the publication of the new Procurement Chapter, and that it will take effect on September 1, 2016 for all municipalities, including the City of Toronto. The Procurement Chapter is primarily based on the requirements of CETA with notable exceptions that the procurement thresholds are lower, and the required timelines for a procurement being out in the market can be determined by the City. OQTCA applies to those goods, services and construction services procured above \$100,000 CAD ("OQTCA Covered Procurements").

Broader Public Sector (BPS) Procurement Directive

The BPS Procurement Directive was issued by the Province of Ontario's Management Board of Cabinet on April 1, 2011. It outlines the responsibilities of public organizations throughout each stage of the procurement process, and ensures that procurement processes are managed consistently throughout the public sector and in a fair and transparent manner. Although the BPS Procurement Directive does not apply to municipalities, the new By-law and policy are written to provide close alignment to the BPS Procurement Directive, as part of leading practices in government procurement.

The Charbonneau Commission

On November 24, 2015, the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry (Charbonneau Commission), released its Final Report on corruption and collusion in the Province of Québec's public procurement practices. As the Final Report currently exists only in the French language, City staff are looking to translate the Final Report into a legally accredited English version. It is expected that the Director, PMMD will report back to Council regarding the recommendations contained within the Final Report and further measures that should be taken to address the issues raised in the Charbonneau Commission including any additional changes to the Purchasing By-law, or other policy or procedural amendments when the translated report is available. Although the City is still waiting for a properly translated version of the Charbonneau Commission, it is already taking steps in the proposed revised Purchasing By-law and Procurement Policy to address at a high level, the issues from the Charbonneau Commission and will facilitate further procedural measures being implemented to detect and counter the risk of collusion and corruption in awarding contracts.

Major Transformational Projects in Purchasing and Materials Management

This is one of four major transformational projects for PMMD in 2016. The other three projects include:

- the Social Procurement Program
- the Supply Chain Management Transformation Project, and
- the PMMD Program Review.

Social Procurement Program

At its meeting on the May 3, 4 and 5, 2016, City Council adopted EX14.8, City of Toronto Social Procurement Program which aims to drive inclusive economic growth by improving access to the City's supply chain for diverse suppliers and leveraging meaningful training and employment opportunities for people experiencing economic disadvantage, including those belonging to equity-seeking communities. The Social Procurement Program creates a foundation to shift the City's procurement culture long-term, showing how all divisions can make a positive impact on the City's poverty-reduction goals.

Supply Chain Management Transformation

PMMD & the Information Technology Division (I&T) are working together on the Supply Chain Management Transformation capital project. On June 3, 2016, Council approved GM12.2 - Provision of SAP Ariba - Proprietary Software as a Service from SAP Canada. SAP Ariba is an end-to-end integrated cloud based solution for purchasing, materials management and account payable functions.

Implementing SAP Ariba will enable the modernization of the City's procurement processes, resulting in efficiencies:

- the introduction of automation and elimination of manual tasks such as receipt of bids, handling bids and entering data into various databases
- improve the number of compliant bids
- improve the ability to analyze data in the procurement process
- improve the capture of early payment discounts, and
- lay the technological ground work to help move to shared services with the City's Agencies.

PMMD Program Review

PMMD, as part of the Shared Services Project, launched a program review in 2014 to examine the service delivery and organizational structure of PMMD, and to introduce Category Management as recommended by KPMG in the City's Shared Services Study. PMMD retained Ernst & Young to conduct the Program Review which will:

- recommend a new organizational structure incorporating category management, strategic sourcing and other best practices
- prepare a supporting business case, and
- an implementation plan to the new model for PMMD due in June 2016.

PMMD will report to Government Management Committee in Q4 2016 on the overall strategy for PMMD based on the Ernst & Young recommendations.

COMMENTS

In 2013, a review team facilitated by the Director, Purchasing & Materials Management Division and comprised of staff from Legal Services; Information & Technology; Internal Audit; Engineering and Construction Services; Toronto Water; Accounting Services; Corporate Finance; Financial Planning; Parks, Forestry & Recreation; Policy, Planning, Finance & Administration; the Auditor General's Office; the Lobbyist Registrar's Office; the Integrity Commissioner's Office and the Ombudsman's Office was established to review and discuss revisions to Chapter 195 and the Procurement Processes Policy to address operational improvements.

The review of Chapter 195 and the Procurement Processes Policy was comprehensive and several meetings were held to examine and discuss all the clauses/sections of the Chapter and Policy. The majority of the changes being recommended respond to upcoming federal and provincial legislation. Some changes are the result of Legal Services' recommendations to:

- provide greater transparency to existing purchasing practices and methods;
- better align Chapter 195 and the Procurement Processes Policy with the Ontario BPS Procurement Directive and applicable trade agreements;
- address supplier conflicts of interest and ethics when evaluating the qualifications of suppliers to bid; and
- ensure that best value for money is paramount and is documented in purchasing decisions.

The proposed changes for the Purchasing By-law are set out in Attachment 1 and a revised Procurement Processes Policy is set out in Attachment 2. Below is a high level summary of important changes and a description of why each change is being recommended.

CETA/OQTCA and the Purchasing By-law and Procurement Processes

Application and Exemptions

CETA and OQTCA apply to the procurement of goods and services by the City. CETA and OQTCA however set out a number of items that are exempted from the Government Procurement Chapter including:

- the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;
- non-contractual agreements or forms of assistance including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;
- the procurement or acquisition of services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
- public employment contracts; or
- procurement conducted for the specific purpose of providing international assistance, including development aid.

The Purchasing By-law has been revised to include these exemptions noted in CETA and OQTCA. The distribution of grant money via a competitive process will no longer be awarded or approved through the Purchasing By-law. While these items will not be awarded through the Purchasing By-law, the Chief Purchasing Official may still provide advice to other Divisions on how to run a competitive process.

Open-Competitive Solicitation Thresholds

As indicated above, CETA will apply to CETA Covered Procurements (above \$360,400 for goods and services and \$8.5 million for construction services). Any contract that is a CETA Covered Procurement must be done via an open competitive solicitation process unless an exception applies, such as the use of the non-competitive exceptions.

OQTCA's thresholds start at \$100,000 which means that contracts valued over \$100,000 must be done via an open-competitive solicitation unless an exception applies. The City, under the existing Purchasing By-law, currently puts all calls valued over \$50,000 to an open-competitive solicitation. In the revised Purchasing By-law and Procurement Processes Policy, the City would align itself with the lower threshold established by OQTCA and require that all contracts valued over \$100,000 be done via an open-competitive solicitation, unless an exception applies. For procurements between \$50,000 and \$100,000, PMMD would be able to conduct a limited solicitation, on behalf of Divisions, to get bids or proposals from at least three suppliers who are invited to participate. This is similar to the Divisional Purchase Order procedure that allows Divisions to get three quotes for contracts valued up to \$50,000.

Non-Discrimination Rules & Canadian Content

CETA and the OQTCA will require that all covered procurements over their respective thresholds comply with CETA's and OQTCA's Non-Discrimination clause.

Under CETA, the City shall treat EU suppliers no less favourably than the treatment of Canadian suppliers and further, the City shall not treat locally established suppliers less favourably than another locally established supplier on the basis of the degree of foreign affiliation, or shall not discriminate against a locally established supplier on the basis that the goods or services offered by that supplier are goods from the EU.

Further, CETA and OQTCA requires that the City limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement. With respect to technical requirements, the City cannot create unnecessary obstacles to international trade or which are discriminatory.

With respect to the use of Canadian Content in the procurement process, CETA will prohibit the use of Canadian Content rules in any "CETA Covered Procurement", with one exception: the purchase of transit vehicles. In that situation, Canadian Content up to 25% can be included as part of the procurement.

Under the OQTCA, preference can be added in the evaluation process of a bid or proposal that takes into consideration Canadian Content, provided that the measure is consistent with international trade obligations, that its purpose is not to avoid competition or to discriminate, and that it is not applied in a discriminatory manner. Considering OQTCA and CETA together, there is a possibility of using some level of Canadian Content for goods and services up to \$360,400 and up to \$8.5 million for construction services. In the case of construction services, the work is primarily done by Canadian residents given the City's labour trade obligations and the basic requirement that the construction work has to be done in the City. Based on 2013 data, 92% of the City's Vendors were located in Toronto and the GTA, and 98% of the City's vendors were located in Ontario (including Toronto and the GTA).

Revisions in the Purchasing By-law include making it a responsibility of Division Heads and Division Project Leads to ensure that specifications are non-discriminatory to any supplier or provide a preference to any supplier. In the Procurement Processes Policy, a specific provision has been added that requires that the City 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.

Timelines

CETA will require the City to post a notice of intended procurement setting out a summary of the details of each Covered Procurement. Posting the notice of intended procurement is essential, as CETA will require that the procurement closing date be 40 days from the posting of the notice. This is intended to allow EU suppliers an opportunity to bid.

The City may reduce the 40-day time-period, in accordance with the provisions of CETA. For example in the following circumstances, the timelines could be reduced by 5 days each (down to 25 days):

- the notice of intended procurement is published by electronic means;

- all the tender documentation is made available by electronic means from the date of publication of the notice of intended procurement; and
- the City accepts tenders by electronic means.

OQTCA requires that the procuring entity take into consideration the complexity of the procurement but otherwise allows the procuring entity to determine the length of time a call will be on the street.

The revised Purchasing By-law will require a notice of intended procurement for every procurement over \$100,000 in value and the Procurement Processes Policy will require that all procurement calls are out in the market for at least the minimum time mandated by the trade agreements. However, the Chief Purchasing Official will be responsible for implementing procedures governing specific timelines for notices of intended procurement.

Negotiation

CETA and OQTCA allow for negotiations as part of the procurement, if it was identified in the notice of intended procurement. The Procurement Processes Policy has been revised to include the potential for negotiation in an RFP process prior to the award, including the use of best and final offers (BAFOs), concurrent negotiations and non-binding RFPs, so long as it is clear in the notice of intended procurement that negotiations will be part of the process.

The Procurement Processes Policy also sets out that in the case of Tenders, 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, in consultation with 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. This is consistent with the Construction Industry's Canadian Construction Documents Committee (CCDC) guidelines. The result of any negotiations will need to be documented in a report, prior to award, and where negotiations are not in compliance with the disclosed guidelines set out in the solicitation, the award would need to be awarded by Council.

Non-competitive Procurement

CETA and OQTCA allows for situations in which non-competitive procurement is acceptable, so long as using a non-competitive process was done in good faith and not designed to simply avoid the requirements of doing an open competitive procurement process. Many of the rationales for allowing the use of non-competitive procurements that the City relies on today are also contained within CETA and OQTCA, such as monopoly, existence of proprietary rights, competition failing to identify a qualified supplier, and emergencies. However, there are additional rationale set out in CETA and OQTCA that the City currently does not cover, including the ability to purchase goods

when there is a uniquely advantageous point to do so, such as a bankruptcy or liquidation; the procuring of a prototype; and the awarding of a contract to the winner of a design competition.

The rationales for a non-competitive procurement process are currently found in the Procurement Processes Policy. In the revised Purchasing By-law, the rationale for being able to use a non-competitive procurement process has been moved from the Procurement Processes Policy to the Purchasing By-law and includes new items as reflected in trade agreements.

Pre-Award and Post-Award Disputes

CETA requires that the Federal Government ensure there is a timely, effective, transparent and non-discriminatory administrative or judicial review procedure such that a bidder/supplier may challenge breaches of the Government Procurement Chapter. For specific bid disputes, the City is required to provide an impartial and timely consideration to any bid complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure. OQTCA has similar requirements. Suppliers will still be able to use the courts to challenge award decisions.

The Purchasing By-law has been revised to include two sections related to disputes (Pre-Award Disputes and Post-Award Disputes).

Pre-Award Disputes, such as being declared non-compliant, requires that suppliers communicate with the Chief Purchasing Official as soon as possible about such a dispute. The Chief Purchasing Official may delay an award to investigate and to resolve a dispute. The Procurement Processes Policy further sets out the Pre-award Disputes, requiring that a supplier notify the Chief Purchasing Official as soon as possible from knowing they have a dispute and within 5 days of being declared non-compliant. The Chief Purchasing Official, in consultation with the City Solicitor, will review the dispute and may dismiss it, take appropriate action such as reversing the decision to declare the supplier non-compliant, or decide to have the award made by City Council based on the material risk associated with the dispute.

This Pre-Award Dispute process is similar to the existing process with two major differences. First, timelines are introduced on the supplier so that they can act quickly to get resolution to their concern before the award process is complete. Second, the concept of a material written objection has been removed and replaced with the concept of material risk. In the existing system, a supplier has more control to push the award decisions based on a material written objection being sent in. Now, City staff have more responsibility to review the issue and determine whether there are material risks that should require Council to review the matter and decide accordingly.

Post-Award Disputes would allow a supplier to submit a dispute in writing, first to the Chief Purchasing Official, who will review the dispute, within 10 days of being notified

of an award being made, or within 5 days of a debriefing (and the supplier will be entitled to get a debriefing within 60 days of the award). If resolution cannot be obtained from the Chief Purchasing Official, the supplier can submit the dispute to the Treasurer for any dispute to an award that is over \$100,000 in value. The section requires that the supplier must set out specific detail to the Treasurer, including the facts supporting the dispute and the proposed remedial action. The Treasurer will review the material, in consultation with the City Solicitor, or may set up an independent review team to review the dispute. The Treasurer may decide to dismiss the dispute, or direct the Chief Purchasing Official to take appropriate remedial action, including rescinding the award and any executed contracts and cancelling the procurement. This may also require a report to Council on how best to resolve the dispute, depending on the material risk of the situation.

The Bid Dispute process is consistent with the recommendation from the Bellamy Inquiry that the City adopt a formal two-stage process to manage bidder complaints, to replace the current standing committee/deputation approach.

Single Point for Electronic Posting of Government Procurement

CETA requires the Federal Government to develop a single point of electronic access to all government procurements. CETA allows for a 5 year transition time before this requirement comes into force. The Federal Government is working on acquiring an I&T solution that will allow all Provincial, Municipal and other government agencies, to post or link their respective notices of intended procurement in one location. PMMD will continue to monitor the progress of the Federal Government to determine the impact on the City's procurement activities.

The Purchasing By-law and Procurement Processes Policy has been revised to allow PMMD to post-procurement information online (policies, notice of intended procurements, notice of planned procurements, procurement opportunities and award notifications) and to be able to receive submissions electronically in order to be in line with the requirements of CETA and OQTCA.

Reinforcing Ethics in the Procurement Process – City Responsibilities & Supplier Code of Conduct

A major revision to the Purchasing By-law is the introduction of a Supplier Code of Conduct. The Supplier Code of Conduct consists of a number of different provisions that were already in use in City procurement documents, however it was felt that given the importance of the conduct of Suppliers in the Procurement Process, especially in light of the Charbonneau Commission and in line with the Bellamy Inquiry, staff are recommending that those provisions be part of the Purchasing By-law, requiring that suppliers declare that they are in compliance with the Supplier Code of Conduct. Failure to comply with the Supplier Code of Conduct will be grounds for the Chief Purchasing Official to disqualify a Supplier from a particular procurement process, and may be grounds for suspension by City Council. Further, a contravention of the Supplier Code of

Conduct may also be grounds for a Division to terminate a contract awarded to that supplier.

Highlights from the Supplier Code of Conduct include (see Attachment 1 for more details on the Supplier Code of Conduct):

- Conflict of Interest - Suppliers must declare and disclose any actual or perceived conflict of interest in the preparation of the submission or during the execution of the contract. Conflicts of interest or unfair advantage, include the hiring of former City employees (management and non-management) that were involved in the procurement. This provision will effectively replace the Policy on "Excluding Bids from External Parties Involved in the Preparation or Development of a Specific Call/Request" and the Policy on "Restrictions on the Hiring and use of Former City of Toronto Management Employees for City Contracts" and is the basis for recommending the repeal of those two policies to Council;
- Collusion or unethical bidding practices - Suppliers cannot collude with other suppliers and must disclose any affiliations with other suppliers that might be seen to compromise the principle of fair competition, including any proposed subcontracting relationships;
- Illegality - Suppliers must disclose any previous convictions of the bidder/supplier or its affiliated persons for collusion, bid-rigging, price-fixing, bribery, fraud etc. A supplier shall be automatically deemed ineligible for an award for a minimum period of five years from the date of the conviction, unless pre-approved by the Treasurer. In addition, the Procurement Processes Policy sets out that the Treasurer will take into consideration pardons before declaring any bidders ineligible, that in certain public interest exceptions, the Treasurer may approve the use of an ineligible bidder, that any bidder is prohibited from using an ineligible bidder as a subcontractor, and that the City may terminate any contract with anyone found to be convicted of the above noted crimes;
- Interference prohibited –Suppliers are prohibited from threatening or harassing City staff, Members of Council or other suppliers or potential suppliers doing business with the City;
- Gifts or favours prohibited –Suppliers are prohibited from offering gifts or favours to City employees or Members of Council to influence the procurement process;
- Acknowledgement and compliance with the Supplier Code of Conduct will be incorporated into all City contracts with suppliers, and may be a factor in contract termination, where recommended by the City Solicitor.
- Suppliers in debt or in litigation with the City – the Treasurer in their absolute discretion may disqualify a supplier who is in debt or in litigation with the City. The Treasurer will consult with the City Solicitor and consider a number of factors to determine whether to disqualify a Supplier in litigation with the City. This is not intended to stop Suppliers who might be in debt or litigation with the City on unrelated matters to the procurement process from doing business with the City.
- Suspension of suppliers from future solicitations –

- Clearly identifies that City Council can suspend any Supplier from having the opportunity to make future submissions to solicitations or otherwise provide goods or services to the City due to persistent and documented poor performance or default on previous contracts or for such other violations of the Supplier Code of Conduct or on other integrity grounds as may be prescribed in the City's policies and procedures. City Council will be able to suspend for a period of 1 to 5 years depending on the circumstances of the violation.
- Further, setting out delegated authority to the Chief Purchasing Official, in consultation with Legal Services, to temporarily suspend a supplier's eligibility to bid for up to six months due to a contravention of the Supplier Code of Conduct and requiring the Chief Purchasing Official to report to Government Management Committee annually on the use of such delegation.

For City staff, a section referencing the Toronto Public Service By-law is made in the Purchasing By-law to emphasize the importance of ethical behaviour and the avoid of conflict of interest in the procurement process.

Broader Public Sector Procurement Directive & Clearer Language

The revisions to the Procurement Processes Policy also reflect City staff's recommendation to bring the City's Purchasing By-law and Procurement Processes Policy in alignment with the Province's Broader Public Sector Procurement Directive as a leading practice in government procurement.

Additions to the Procurement Processes Policy to reflect the BPS Procurement Directive include:

- A table setting out the segregation of duties between PMMD, the Procuring Division, Legal Services and others in the procurement process;
- A table summarizing the authority to award competitive procurements and the authority to enter into non-competitive procurements as set out in the Purchasing By-law;
- Setting out standard requirements for the evaluation of a procurement, including provisions for evaluation criteria, instructions regarding resolving math errors and tied bids, major and minor bid irregularities and overseeing evaluation teams;
- Making public openings optional and allowing for electronic openings;
- Adding a timeline for when a supplier can request a debriefing; and
- Setting out standard requirements for the contract that is awarded from the procurement, such as ensuring that:
 - Contracts above \$100,000 must be in the form of contract satisfactory to the City Solicitor;
 - The term of the contract, including option years, is set out in the procurement document, including specifying who has the authority to exercise any option years;

- The contract must have an appropriate termination clause;
- The responsibility for contract management lies with the Division and includes contractor performance evaluation, documenting any changes to the contract, and ensuring proper payment approval.

In consultation with the City Clerk's Office, sections of the Purchasing By-law outlining the authority for staff, Bid Committee, Standing Committee and Council to make an award, were rewritten. In the current version of the Purchasing By-law, these authorities spanned many sections which had to be read together in order to determine the proper authority to make an award. In the revised Purchasing By-law, the authority to award is clearly outlined such that each section can be read on its own. There are otherwise no changes to the delegated authority to Standing Committees to make an award.

Further, staff are recommending some modifications to the Bid Committee to make the its role more clearly understood in the procurement process. The Bid Committee's name is proposed to change to the Bid Award Panel. The current membership of the Bid Committee is the City Manager or his delegate, the Deputy City Manager & Chief Financial Officer or his delegate, the City Clerk (who is the chair but has no vote) and a representative from the Division whose contract is being awarded. Quorum for Bid Committee is the City Manager and the Deputy City Manager & Chief Financial Officer.

Given that the Division Head's delegate can change based on the call being awarded, the membership of a given Bid Committee meeting can change multiple times. Often times, the delegate of the Division Head does not attend the Bid Committee meeting. As a result, staff are proposing the following membership of the Bid Review Panel:

- The City Manager or his delegate (appointed as Chair);
- The Deputy City Manager & Chief Financial Officer or his delegate;
- The Deputy City Manager of Cluster A or her delegate; and
- The Deputy City Manager of Cluster B or his delegate.

The Clerk will still provide support to the Bid Award Panel but will no longer be considered a member. Quorum will be 3 of the 4 members in attendance.

Access to Information for Members of Council at Various Stages of the Procurement Process

One change is proposed to the Access to Information for Members of Council at Various Stages of the Procurement Process Policy. The change is to remove the requirement to have Council approve terms of reference in engaging the industry prior to the issuance of a particular procurement. Changes to the Procurement Processes Policy would allow PMMD to conduct informal and formal market research prior to a specific procurement process, including the use of vendor days, market soundings, Request for Information and Request for Expressions of Interest. Allowing staff to engage in market research is more efficient than requiring Council approval prior to the consultation. Procedural safeguards

will still need to be in place to ensure that any procurement call is not biased in favour of a particular supplier based on the market research.

Appendix 3 sets out the proposed change to the Access to Information for Members of Council at Various Stages of the Procurement Process Policy.

Social Procurement Policy

As mentioned previously, the Purchasing By-law is being revised such that open competitive procurements will be required above \$100,000 (instead of above \$50,000), and that PMMD will be able to use limited solicitations of getting three quotes up to \$100,000. This change allows the Social Procurement Policy to expand by requiring PMMD to get at least one quote from a certified diverse supplier when a limited solicitation is used up to \$100,000. This is line with the requirement on Divisions to get at least one quote from a certified diverse supplier up to \$50,000. Appendix 4 sets out the specific change to the Social Procurement Policy.

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SIGNATURE

Mike St. Amant
Treasurer

ATTACHMENTS

Attachment 1 – Summary of Proposed Revisions to Chapter 195

Attachment 2 – Revised Procurement Processes Policy

Attachment 3 – Revisions to the Access to Information for Members of Council at Various Stages of the Procurement Process

Attachment 4 – Revisions to the Social Procurement Policy

Attachment 1 – Summary of Proposed Revisions to Chapter 195

The following will form the basis of a new Chapter 195.

Table 1 sets out the new provisions to Chapter 195. Table 2 will set out revisions to existing provisions in Chapter 195. Table 3 and 4 will set out provisions that have not changed but may be moved to improve the flow of Chapter 195.

Table 1 – New Provisions

No.	By-law Provision	Description
1.	Purpose	<p>To include a provision that sets out the purpose of the Purchasing By-law:</p> <ul style="list-style-type: none"> A. Protect the interests of the City, the public and persons participating in the procurement process by providing a clear statement of how goods and services will be acquired; B. Maintain the integrity of the procurement process by ensuring that, whenever possible, competitive methods of procurement will be used to obtain the best value for the City; C. Clearly define circumstances in which non-competitive procurements may be awarded; D. Ensure that procurement is conducted in a manner that enables the divisions of the City to operate efficiently and effectively; E. Clearly define the roles and responsibilities of those persons involved in the procurement process; F. Outline the process for co-operative purchasing and disposing of surplus goods; and G. Establish a Supplier Code of Conduct and City employee ethical procurement standards.
2.	Division Head Responsibilities	<p>To include a provision that sets out Division Head responsibilities (which may be delegated to Division staff, where appropriate) as it relates to the Procurement Process such as:</p>

		<ul style="list-style-type: none"> ▪ Ensuring division staff involved in procurement receive appropriate training; ▪ Advising the Purchasing and Materials Management Division of divisional procurement plans and specific upcoming procurements; ▪ Participating in the development of template specifications, quality requirements, scope of work and other requirements including contract documentation for routine procurements conducted by their division; ▪ Ensuring that procurements valued up to \$50,000 made by division staff are made in compliance with the requirements of this chapter and the Financial Control By-law; ▪ Ensuring that goods and services are legitimately required for City purposes prior to the issuance of any solicitation; ▪ Ensuring that all technical specifications and requirements can be justified on the basis of a legitimate business objective and do not unfairly discriminate against any potential supplier; ▪ Directing and overseeing all procurements led by or coordinated by their division including ensuring that resulting contracts and contract amendments due to price or scope changes are approved only in accordance with the requirements of the Financial Control By-law; ▪ Considering short and long-term requirements with respect to quantities and time lines or total project costs; ▪ Considering the cost of ongoing maintenance, support and licensing and other requirements; ▪ Consulting with the Information and Technology Division of the City if
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		<p>the goods or services, or part thereof, are comprised of computer hardware or software, internet applications, or licensing or maintenance thereof, or will potentially have implications for the City's existing information technology infrastructure; and</p> <ul style="list-style-type: none"> ▪ Selection of an appropriate division project lead.
3.	Divisional Project Lead Responsibilities	<p>To include a provision that sets out the responsibilities of the Division Project Lead, the staff assigned to acquire the goods and services and manage the contract once acquired for the Division, including:</p> <ul style="list-style-type: none"> ▪ Preparing technical specifications and scope of work; ▪ Ensuring that goods and services, and the suppliers, conform with the contract terms and technical specifications; ▪ Managing the contract through the completion of the performance of all contractual obligations, including payment, and seeking appropriate approvals for amendments or termination of the contract; and ▪ Identifying areas of improvement in the procurement documentation and evaluation process.
4.	<p>Standard Procurement Solicitation Methods</p> <ul style="list-style-type: none"> ▪ Information Gathering ▪ Pre-qualifications ▪ Competitive Solicitations 	<p>To include provisions that set out the standard procurement solicitation methods that may be used to solicit bids or proposals for goods and services, including but not limited to:</p> <ul style="list-style-type: none"> ▪ Request for Information ▪ Request for Expression of Interests ▪ Request for Supplier Prequalification ▪ Request for Roster ▪ Request for Quotation ▪ Request for Proposal ▪ Request for Tender

5.	Notice of Intended Procurement	To include a provision that sets out the requirement for all open competitive procurement over \$100,000 to post an electronic notice of intended procurement to invite bidders/proponents to respond to a specific solicitation.
6.	Procurement of same goods and services as public body (piggybacking)	To include a provision that sets out the conditions when the City may piggyback on a contract acquired competitively by another governmental entity such as the Federal Government, the Provincial Government, other municipalities, City Agencies and Corporations or other public entities and setting out that the authority to award such a contract will be done in accordance with competitive procurement as set out in the Chapter 195.
7.	Non-Competitive Procurement exceptions	<p>To add a provision in Chapter 195 that sets out the allowable exceptions to a competitive process based on procurement practices and trade agreements, where both the proposed non-competitive procurement and the particular supplier can be justified in good faith, based on one or more of the following:</p> <ul style="list-style-type: none"> ▪ A statutory monopoly; ▪ An absence of competition in the market due to technical reasons; ▪ The existence of exclusive rights such as patent, copyright, license or warranty restriction; ▪ Procurement of a work of art; ▪ For additional deliveries by an original supplier of goods and services that were not included in the original procurement, but where a change cannot be made for economic or technical reasons without causing significant inconvenience or substantial duplication of costs for the City; ▪ An attempt to acquire the goods competitive in good faith has failed to find a compliant supplier or where

		<p>the submissions received are collusive;</p> <ul style="list-style-type: none"> ▪ An emergency; ▪ Construction, renovations, repairs and/or maintenance in respect of real estate leased or occupied by the City which may only be conducted by another person in accordance with a real estate agreement; ▪ The goods or services are purchased under circumstances which are exceptionally advantageous to the City, such as in the case of a bankruptcy or receivership; ▪ It is advantageous to the City to acquire the goods or services from another public body; ▪ Another organization is funding or substantially funding the procurement and the City has determined that the supplier and the terms and conditions of the commitment into which the City will enter are beneficial to the City; ▪ The procurement of a particular brand of goods or services that are intended solely for resale to the public and no other brand meets the City's program objectives nor is the brand available from any other source; ▪ Goods purchased on the commodity market; ▪ Purchase of a prototype or a first good or service that is developed in the course of a contract for research, experiment, study or original development ▪ A contract to be awarded to the winner of a design contest, provided that: (i) the contest is organized in a manner that is consistent with the principle of fair competition contained in this policy, in particular relating to advertising; and, (ii) the participants are judged by an
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		<p>independent jury with a view to design contract being awarded to a winner; or</p> <ul style="list-style-type: none"> ▪ Such other non-competitive procurement exemptions authorized by Council. <p>Non-competitive over \$500,000 and/or longer than 5 years, will still require Council approval.</p>
8.	Limited Solicitations Exceptions	<p>To add a provision in Chapter 195 that sets out the allowable exceptions when a limited solicitation (at least 3 suppliers are invited to participate) including:</p> <ul style="list-style-type: none"> ▪ any procurement under \$100,000; and ▪ The confidential nature of the requirement is such that it would not be in the public interest to solicit competitive submissions
9.	Bid Dispute Procedure	<p>To include two provisions that sets out how bid disputes for open competitive procurement will be handled, one for pre-award bid disputes and one for post-award bid disputes.</p> <p>In the context of a pre-award dispute, the intent is the Chief Purchasing Official will resolve the dispute in order to proceed to award, or take the award to Council if the Chief Purchasing Official, in consultation with the City Solicitor, believe there is a material risk in making the award.</p> <p>In the context of a post-award dispute, the intent is the Chief Purchasing Official will review at first instance, and if that can't be resolved, than the dispute will be referred to the Treasurer for review of the file, in consultation with the City Solicitor. The supplier will have specific timelines to bring forward a dispute in line with applicable trade agreements, and will have to set out specifics in order for the dispute to be</p>

		reviewed. If the dispute has merit, the Chief Purchasing Official to take appropriate action which can include rescinding the award/contract and cancelling the call. This may also require a report to Council.
10.	Contract Execution and purchase orders	To include a provision that sets out that: <ul style="list-style-type: none"> ▪ any commitment over \$100,000 must be in a form determined by the City Solicitor; ▪ that the form of commitment must be disclosed with the solicitation; ▪ that the commitment can be signed by the respective staff according to Chapter 259, Signing Authorities; and ▪ PMMD and the Divisions may issue Purchase Orders and Divisional Purchase Orders.
11.	Supplier Code of Conduct Provisions	To include a number of provisions that set out the expectation the City has for suppliers with respect to the procurement process.
11.a.	Honesty and Good Faith	Requiring prospective Suppliers to respond to solicitations in an honest, fair and comprehensive manner that accurately reflects their capacity to satisfy the requirements and in good faith to be able to meet the requirements and complete the contract. The Supplier will also have an obligation to alert the City to any factual errors or omissions in the solicitations as early as possible.
11.b.	Confidentiality	The Supplier must maintain confidentiality for any confidential information and to acknowledge that their submission is subject to the <i>Municipal Freedom of Information and Protection of Privacy Act</i> .
11.c.	Conflicts of interest or unfair advantage	Suppliers must declare and disclose any actual or perceived conflict of interest in the preparation of the submission or during the execution of the contract, including but not limited to:

		<ul style="list-style-type: none"> ▪ Where a supplier has engaged current or former City employees, Councillors or other officials to take any part in the preparation of the bid or the performance of the contract if awarded, any time within two years of such persons having left the employ or elected office of the City; ▪ Where a supplier has engaged any family members, friends or private business associates of any City employee, Councillors or other officials which may have or appear to have any influence on the procurement process or performance of the contract if awarded; ▪ Prior involvement by the supplier, its agents or affiliated persons in developing the technical specifications or other evaluation criteria for the solicitation; ▪ Prior access to confidential City information by the supplier, its agents or affiliated persons that is materially related to the solicitation and that was not readily accessible to other prospective suppliers; or ▪ Where a supplier or its affiliated persons are engaged in litigation with the City. <p>The inclusion of this broader provision will result in the repeal of the Policy on "Excluding Bids from External Parties Involved in the Preparation or Development of a Specific Call/Request" and the Policy on "Restrictions on the Hiring and use of Former City of Toronto Management Employees for City Contracts".</p>
11.d.	Collusion or unethical bidding practices	Requiring suppliers not to collude with other suppliers and to disclose any affiliations or other relationships with other suppliers that might be seen to compromise the principle of fair competition, including any proposed subcontracting relationships.

11.e.	Illegality	<p>Suppliers will have to disclose any previous convictions of the bidder/supplier or its affiliated persons for collusion, bid-rigging, price-fixing, bribery, fraud or other similar behaviours or practices prohibited under the <i>Criminal Code</i>, the <i>Competition Act</i> or other applicable law, for which they have not received a pardon.</p> <p>A supplier shall be deemed ineligible for an award for a minimum period of five years from the date of the conviction, unless pre-approved by the Treasurer.</p>
11.f.	Interference prohibited	Prohibition on Suppliers from threatening, harassing or intimidating staff, Councillors or any other supplier from bidding on a City solicitation or performing a City contract.
11.g.	Gifts or favours prohibited	Prohibition on Suppliers offering gifts or favours to City staff or Councillors or other officials to influence or interfere with their duties in respect of a procurement process or contract management.
11.h.	Misrepresentations prohibited	Prohibition on Suppliers misrepresenting their past experience or qualifications.
11.i.	Prohibited communication during the solicitation (blackout period)	Prohibition on Suppliers, or representatives of Suppliers from communicating with anyone besides the official point of contact for a solicitation, from the time of issuance of the solicitation until the final award.
11.j.	Failure to honour bid	Requirement that Suppliers honour their bids except where permitted to withdraw their bid in accordance with the procedures set out in the solicitation.
11.k.	Supplier Performance	Requirement that Suppliers fully perform the contract in accordance with the terms of the contract and maintain a satisfactory performance rating.
11.l.	Disqualification of suppliers for non-compliance	Suppliers that do not certify compliance with the Supplier Code of Conduct or that

		<p>violate the Supplier Code of Conduct, including failing to disclose conflicts of interest may be disqualified by the Chief Purchasing Official, in consultation with the City Solicitor, from a solicitation or their contract may be terminated by the Division Head.</p> <p>The Chief Purchasing Official, in consultation with the City Solicitor, may also disqualify any supplier who may otherwise have an unfair advantage or conflict of interest that cannot be resolved in relation to any procurement</p>
11.m.	Suppliers in debt or in Litigation with the City	<p>The Treasurer, in their absolute discretion, may disqualify a supplier, or their affiliated persons, who are indebted to the City or in ongoing litigation with the City related to a contract awarded by the City or other commercial dealings with the City. The Treasurer will consult with the City Solicitor and consider a number of non-exclusive factors in determining whether to disqualify a supplier, including:</p> <ul style="list-style-type: none"> ▪ The supplier's history of bringing frivolous or vexatious litigation or other litigious conduct that has resulted in unnecessary additional costs to the City or other public bodies; ▪ The outcome of any prior or interim litigation, including whether costs have been awarded against the supplier or the City; ▪ The prospect of setting off supplier debt against future contract payments; ▪ Where the supplier is the only qualified supplier or in cases of an emergency; ▪ The overall risk in relation to the total cost of the proposed commitment,

		<ul style="list-style-type: none"> ▪ Subrogated insurance claims brought in the name of the supplier but not initiated by the suppliers; or ▪ Claims by or against the City that in total value are less than \$100,000. <p>This provision will not apply to bid disputes by suppliers or their right to seek other corrective measures against the City under any administrative or judicial review procedure related to the procurement process.</p>
11.n.	Suspension of suppliers from future solicitations	<p>Setting out that City Council can suspend any Supplier from having the opportunity to make any future submissions to solicitations or otherwise provide goods or services to the City due to persistent and documented poor performance or default on previous contracts or for such other Supplier Code of Conduct or integrity grounds as may be prescribed in the City's policies and procedures for a period of 1 to 5 years.</p> <p>Setting out delegated authority to the Chief Purchasing Official, in consultation with Legal Services, to temporarily suspend a supplier's eligibility to bid for up to six months due to a contravention of the Supplier Code of Conduct and requiring the Chief Purchasing Official to report to Government Management Committee annually on the use of such delegation.</p>
12.	In-house bid restriction	Prohibiting in-house bids from City Divisions or staff unless with prior approval with Council including approval of the process for fairly evaluating those submissions.
13.	No informal authority to contract	No employee or elected official shall make or offer to make any procurement on behalf of the City to which this by-law applies except as may be provided for in this by-law and in compliance with the Financial Control By-law.

14.	No split commitments	No requirement for the payment of goods or services received by the City shall be divided in order to avoid any of the requirements of this chapter or the Financial Control By-law.
15.	No commitments without funding approval	Requirement that no solicitation can be awarded without funding approval.
16.	Conflict with policies and procedures	Setting out that the Purchasing By-law takes precedence over any other purchasing policy or purchasing procedure where a conflict is determined.

Table 2 – Revisions to existing Provisions

No.	By-law Provision	Description	Existing By-law Provision
1.	Definitions	<p>New Definitions and revisions to be added to reflect changes to Chapter 195 including items such as:</p> <ul style="list-style-type: none"> ▪ Best value ▪ Conflict of interest ▪ Emergency ▪ Form of Contract ▪ Ineligible Supplier ▪ Notice of Intended Procurement ▪ Limited Solicitation ▪ Major and Minor Irregularities ▪ Selective Solicitation ▪ Supplier ▪ Suspended Supplier 	195-1
2.	Application and Exemptions	<p>To identify that Chapter 195 applies to the acquisition of all goods and services required by City Divisions and applies to the Accountability Officers with the necessary modifications for them to carry out their independent statutory functions.</p> <p>To also clearly identify that Chapter 195 does not apply to:</p>	195-3

		<ul style="list-style-type: none"> ▪ The acquisition or rental of land, existing buildings or other immovable property or the rights thereon; ▪ City employment contracts; ▪ Any form of assistance that the City provides, including co-operative agreements, grants, loans, equity infusions, guarantees and fiscal incentives; ▪ Procurement between the City and another public body; ▪ Procurement by the City on behalf of another person where the procurement would not be covered by this chapter if it were conducted by the other person itself; ▪ The procurement or acquisition of services related to the sale, redemption and distribution of the City's public debt or contracts relating to the issue, purchase, sale or transfer of securities or other financial instruments; or ▪ Those other items listed in Schedule "A" to the Financial Control By-law. 	
3.	General Duties and Responsibilities of the Chief Purchasing Official	To clarify the existing duties of the Chief Purchasing Official in the administration of the procurement process, reporting on the procurement process, provide advice on the procurement process; and creating the necessary procedures to enable the procurement process.	195-5
4.	Bid Award Panel Composition and Staff responsibilities	To rename Bid Committee to the Bid Award Panel, and to change the composition of membership by adding: <ul style="list-style-type: none"> ▪ Deputy City Manager, Cluster A or their delegate; and 	195-11, 195-12

		<ul style="list-style-type: none"> ▪ Deputy City Manager, Cluster B or their delegate. <p>Removing the City Clerk as a non-voting member, and the rotating membership of Division Heads.</p> <p>Setting out the responsibilities of staff on the Bid Award Panel, including the City Clerk and the City Solicitor</p>	
5.	Co-operative Purchasing	To clarify when the Chief Purchasing Official is allowed to work with other public bodies to conduct co-operative purchasing, specifically when the City joins with public bodies to issue joint procurements.	195-18
6.	Authority to Award – Chief Purchasing Official	To maintain the same delegated authority to award a solicitation under \$500,000 by the Chief Purchasing Official that currently exists but to rewrite the section in plain language.	195-9A
7.	Authority to Award – Bid Award Panel	To maintain the same delegated authority to award a solicitation between \$500,000 and \$20,000,000 by the Bid Award Panel that currently exists but to rewrite in plain language.	195-13
8.	Extended Authority – Bid Award Panel	To maintain the same extended delegated authority to award solicitations above \$20 million by the Bid Award Panel during the summer recess, election recess, a labour disruption and where a Standing Committee meeting is cancelled and there is no scheduled Council session within the next week that currently exists but to rewrite in plain language.	195-16
9.	Authority to Award – Standing Committee	To maintain the same delegated authority to award a solicitation over \$20 million by the appropriate Standing Committee that currently exists but to rewrite in plain language.	195-14

10.	Authority to Award – Council	<p>To maintain the same authority to award a solicitation where:</p> <ul style="list-style-type: none"> ▪ Staff are not recommending the supplier who may not be the lowest bidder or highest scoring proponent; ▪ The award exceeds 5 years in duration for contracts funded by the operating budget, or awards that exceed the approval term of the capital project; ▪ There is no funding approval; ▪ The Chief Purchasing Official, in consultation with City Solicitor, has determined there are material risks to the award such that it should be made by Council; and ▪ Where staff believe Council should make the award and where Council directs staff that Council should make the award. 	195-15
11.	Cancellation of Solicitations	<p>To add the rationale that the call failed to identify a qualified Supplier as a rationale that the Chief Purchasing Official can cancel a solicitation and that the Treasurer can cancel the call if the Treasurer determines there is a material breach to the integrity of the process.</p>	195-8
12.	Surplus Goods	<p>To add the following as acceptable means to dispose of surplus goods to the existing reasons:</p> <ul style="list-style-type: none"> ▪ donating or selling the goods for a nominal fee, or generating revenues which would be donated, to a not-for-profit charitable organization that is registered as such with the Canada Revenue Agency; or ▪ classifying as waste and recycling, scrapping, 	195-17

		dismantling, destroying and/or disposing.	
13.	Employee ethical procurement standards	To change the existing provision to be broader about all employees, and reinforcing the requirement for City staff to abide by the Toronto Public Service By-law and that Division Heads must disclose any potential conflict of interest in the procurement process to the Chief Purchasing Official, as early as possible.	195-4

Table 3 – Provisions that have moved to the Procurement Process

No.	Existing Provision Deleted	Rationale
1.	195-6 - Authority of Chief Purchasing Official to pre-select and to pre-qualify.	Moved to Procurement Processes Policy
2.	195-7 - Chief Purchasing Official and opening of responses.	Moved to Procurement Processes Policy

Table 4 – Provisions that have moved with no changes

No.	Provision with no changes but will be moved	Existing Section Number
1.	Monetary References	195-2

Attachment 2 – Revised Procurement Processes Policy

Policy Sections

1. Purpose
2. Interpretation
 - 2.1. Definitions
3. Segregation of Duties
4. Approval Authorities
5. Competitive Procurement Thresholds
6. Procurement Planning
7. Standard Procurement Solicitation Methods
 - 7.1. Information Gathering
 - 7.2. Pre-Qualification
 - 7.3. Open Competitive Solicitations
8. Posting Solicitation Documents and Public Openings
9. Timelines for Posting Procurements
10. Bid Receipt and Openings
11. Evaluation Criteria and Process Disclosure
 - 11.1. Evaluation Criteria
 - 11.2. Negotiation Procedures
 - 11.3. Addenda Procedures
 - 11.4. Math Errors and Tied Bids Procedures
 - 11.5. Unbalanced Bid Analysis
 - 11.6. Major and Minor Bid Irregularities
12. Evaluation Team
13. Evaluation Criteria Matrix
14. Non-Discrimination
15. Non-Competitive Procurement and Limited Solicitations
 - 15.1. Non-Competitive Procurement Process
 - 15.2. Unsolicited Quotations or Proposals
 - 15.3. Limited Solicitations
16. Contract Award Notification
17. Supplier Debriefing
18. Bid Dispute Resolution
 - 18.1. Pre-Award Bid Disputes
 - 18.2. Post-Award Bid Disputes
19. Contract Establishment, Execution and Administration
 - 19.1. Establishing the Contract
 - 19.2. Executing the Contract
 - 19.3. Term of Contract Modifications (including Option Years)
 - 19.4. Contract Administration
20. Sale or Disposal of Surplus Materials or Equipment
21. Supplier Code of Conduct
 - 21.1. General

- 21.2. Illegality
- 22. Suspension of Suppliers from Future Solicitations
 - 22.1. General
 - 22.2. Subcontracting
 - 22.3. Existing Contracts
 - 22.4. Public Interest Exception
 - 22.5. Notice of Ineligible and Suspended Suppliers
- 23. General
 - 23.1. Procurement Records Retention and Access to Information
 - 23.2. Procurement Review and Audits

Appendix "A"
Segregation of Duties

Appendix "B"
Approval Authority Table

Revised Procurement Processes Policy

1. Purpose

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.

This policy supplements the Purchasing 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 By-law and those applicable laws.

2. Interpretation

2.1. Definitions

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

3. Segregation of Duties

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 may delegate aspects of the procurement duties to other Divisions.

The Chief Purchasing Official 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

A summary of the approval authority requirements and methodology for the procurement of goods and services under the authority of the Purchasing 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 subject to those exemptions or non-competitive procurement or limited solicitation exceptions set out in the Purchasing 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 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

The Purchasing and Materials Management Division will work with divisions to establish an annual procurement plan that is coordinated with and reflects the division's actual or proposed procurement funding approvals by Council.

The Purchasing and Materials Management Division is responsible for the production of the procurement plan template and its dissemination to all divisions.

Divisions are responsible for developing a business case for each procurement that must include at least the following:

1. A clear summary description of goods and/or services to be procured;
2. An explanation of the need for the procurement, including confirmation that internal resources are not sufficient, where appropriate; and
3. The proposed procurement value and funding source.

The solicitation method shall be recommended by Purchasing and Materials Management Division, in consultation with the 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 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.)
- 7.1.2. The Purchasing and Materials Management Division 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.

7.2. Pre-Qualification for Selective Solicitations

7.2.1. Request for Supplier Qualification

- 7.2.1.1. The Chief Purchasing Official is authorized to determine, in consultation with the 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).

- 7.2.1.2. The Purchasing and Materials Management Division shall 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.
- 7.2.1.3. 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

- 7.2.2.1. The Chief Purchasing Official'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, for incorporation in the technical specifications of any future solicitation. This section is subject to section 14 (Non-discrimination) below.

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

- 7.2.3.1. 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.
- 7.2.3.2. 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 for the RFSQ.
- 7.2.3.3. 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 the City to call on any supplier on the multi-use list to provide goods or services.
- 7.2.3.4. 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.

7.3. Open Competitive Solicitations

The Chief Purchasing Official may use any of the following solicitation methods where the City is required to issue an open competitive solicitation:

7.3.1. 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.

7.3.2. 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.

7.3.3. 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.

7.3.4. 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

The Purchasing and Materials Management Division shall provide a notice of intended procurement and make all open competitive procurements readily available for all suppliers through an accessible 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 Officer will determine the appropriate response time for the solicitation.

10. Bid Receipt and Openings

10.1. 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.

Bids that are received after the closing time shall be returned to suppliers unopened and not evaluated.

10.2. The Chief Purchasing Official will develop procedures with respect to opening bids.

11. Evaluation Criteria and Process Disclosure

11.1. Evaluation Criteria

11.1.1. The Purchasing and Materials Management Division in consultation with the division shall develop evaluation criteria, which is then reviewed and approved by the Chief Purchasing Official (or their designate) prior to commencement of the competitive solicitation process.

11.1.2. 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.

11.1.3. In addition, all solicitations issued will, where appropriate:

- A. Clearly outline mandatory, rated, and other criteria that will be used to evaluate submissions, including the weight of each criterion;
- B. State that submissions that do not meet the mandatory criteria will be disqualified;
- C. Clearly establish the formula for calculating the total price/cost ;
- D. Ensure that all mandatory and rated criteria comply with the Non-Discrimination section of the bylaw 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/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;

11.2. Negotiation Procedures

- 11.2.1. 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.
- 11.2.2. 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.
- 11.2.3. 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, in consultation with 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 Chief Purchasing Official.

11.3. Addenda Procedures

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.

11.4. Math Errors and Tied Bids Procedures

The Chief Purchasing Official shall establish a procedure for resolving mathematical errors and tied bids for all competitive solicitations.

11.5. Unbalanced Bid Analysis

11.5.1. The Chief Purchasing Official 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.

11.5.2. 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. 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
- iii. Is so unbalanced as to be tantamount to allowing an advance payment.

11.6. Major and Minor Bid Irregularities

In addition to the discretion provided to the Chief Purchasing Official to resolve major and minor bid irregularities in the Purchasing By-law, the Chief Purchasing Official 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 Chief Purchasing Official shall consider the advice of the City Solicitor.

12. Evaluation Team

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

- 12.2. The same evaluation team shall be responsible for evaluation of all submissions. The evaluation team shall include division 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 divisions may also be included on the evaluation team where appropriate, including complex or high profile projects and those having corporate-wide implications.
- 12.3. 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.
- 12.4. 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.

13. Evaluation Criteria Matrix

- 13.1. 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.
- 13.2. All records of evaluation scores will be retained for auditing purposes.

14. Non-Discrimination

- 14.1. The City 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.
- 14.2. 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.

15. Non-Competitive Procurement and Limited Solicitations

15.1. Non-Competitive Procurement Process

15.1.1. The Purchasing and Materials Management Division will employ a competitive procurement process wherever possible to achieve optimum value for public money. However, where exemptions or exceptions set out in section 195-7.1 of the Purchasing By-law apply justifying a negotiated non-competitive procurement, the City 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.

15.1.2. 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 By-law and the Financial Control By-law.

15.2. 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.

15.3. Limited Solicitations

- 15.3.1. 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.
- 15.3.2. An informal request for quotation or proposals 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. Any award, by the Chief Purchasing Official, shall be made to the bid that represents the best value, based on the recommendation of the division head.
- 15.3.3. A division head may also use and award a limited solicitation, where the value of the procurement does not exceed \$50,000 in accordance with the procedures established by the Chief Purchasing Official.

16. Contract Award Notification

- 16.1. For procurements valued at \$100,000 or more, the Purchasing and Materials Management Division shall notify the recommended supplier and the unsuccessful suppliers of the pending award.
- 16.2. For competitive and non-competitive procurements valued at \$100,000 or more, 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 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.

17. Supplier Debriefing

For competitive procurement processes valued at \$100,000 or more, the Purchasing and Materials Management Division shall inform all unsuccessful suppliers about their entitlement to a debriefing.

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.

18. Bid Dispute Resolution

18.1. Pre-Award Bid Disputes

Further to Article 195-10.1 (Bid Dispute provisions) of the Purchasing By-law, any pre-award dispute must be received in writing by the Chief Purchasing Official, 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 Chief Purchasing Official may delay an award, or any interim stage of a procurement, pending the acknowledgement and resolution of any pre-award dispute.

The Chief Purchasing Official, 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 Council decide on the award.

The Chief Purchasing Official may adopt and publish such further procedures as are necessary to ensure a timely review and resolution of pre award bid disputes.

18.2. Post-Award Bid Disputes

Post-Award Disputes shall be dealt with in accordance with Article 195-10.2 of the Purchasing By-law and any associated procedures developed by the Treasurer.

19. Contract Establishment, Execution and Administration

19.1. Establishing the Contract

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. 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.

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.

19.2. Executing the Contract

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 in consultation with the City Solicitor shall establish a procedure for the execution of formal contracts for goods and/or services.

19.3. Term of Contract Modifications (including Option Years)

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.

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.

19.4. Contract Administration

19.4.1. General

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.

19.4.2. Payments to Suppliers

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.

19.4.3. Contract Changes

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.

19.4.4. Contingencies and Risk Management

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 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.

19.4.5. Termination and Assignment Clauses

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

19.4.6. Contractor Performance Evaluation and Disqualification

19.4.6.1. The Chief Purchasing Official, in consultation with Divisions and the City Solicitor, will develop further procedures related to contractor performance evaluation and disqualification from future procurements based on poor performance.

19.4.6.2. Project Leads must manage and document Supplier performance in accordance with the terms of the contract, and any performance issues must be addressed. In addition to any other performance evaluation criteria developed by the City, Project Leads must provide a poor past performance rating for suppliers less than full performance of the City contract that results from either:

- i. A termination of the contract due to the supplier's default; or
- ii. A conditional amendment of the contract due to the supplier's default.

19.4.6.3. 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 ensure contract compliance, to supplement a pre-qualification process, or to justify rejecting a supplier's bid for similar deliverables, as part of the solicitation process for evaluating minimum supplier performance and experience criteria. Such records may also justify the City taking action to suspend a supplier from future solicitations.

19.4.6.4. 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.

19.4.7. Service Contracts

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

- A. 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.
- B. 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.
- C. Ensuring that expenses are claimed and reimbursed where the contract explicitly provides for reimbursement of expenses.

20. Sale or Disposal of Surplus Materials or Equipment

Further to Article 12 of the Purchasing 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.

If the Chief Purchasing Official and the division 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.

21. Supplier Code of Conduct

21.1. General

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

21.2. Illegality

21.2.1. General

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

21.2.2. Ineligibility and Pardons

The Treasurer may reverse a determination of ineligibility in respect of an offence listed in Article 195-13.5(A) of the Purchasing By-law if the supplier demonstrates that it or its affiliate person has been granted an absolute discharge, conditional discharge (and has satisfied the conditions), a pardon or a record suspension.

The Treasurer will also not make a determination of ineligibility in a case where a supplier demonstrates that it has benefited from a foreign pardon, (regarding a foreign offense), which in the Treasurer's opinion, in consultation with the City Solicitor, is similar to a Canadian pardon.

22. Suspension of suppliers from future solicitations

22.1. General

The following shall supplement Section 195-13.14 of the Purchasing By-law and Section 19.4.6 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.

22.2. Subcontracting

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

22.3. Existing Contracts

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.

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, in consultation with the City Solicitor.

22.4. Public Interest Exception

The Treasurer may decide that it is in the public interest to approve the use of an ineligible or suspended supplier in the following possible circumstances:

- An emergency where delay would be injurious to the public interest;
- The supplier is the only person capable of performing the contract;
- The contract is essential to maintain sufficient emergency supplies; or
- 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.

The exception is applied on a case-by case basis by the Treasurer.

22.5. Notice of Ineligible and Suspended Suppliers

The Chief Purchasing Official shall maintain a list of suspended and ineligible suppliers and will post such a list electronically.

23. General

23.1. Procurement Records Retention and Access to Information

23.1.1. 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*.

23.1.2. 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.

23.2. Procurement Review and Audits

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

Appendix "A" - Segregation of Duties

Procurement Stage:	Action(s):	Responsibility:
1. Initial Planning and Conditional Approval	<ol style="list-style-type: none"> 1. Develop Procurement Plan 2. Develop a business case and identify funding source and initial funding approval 	<ol style="list-style-type: none"> 1. Division 2. Division and Financial Planning
2. Procurement Streaming and Detailed Planning	<ol style="list-style-type: none"> 1. Select an appropriate procurement stream and solicitation format 2. Identify appropriate contract type 3. Develop initial specification 4. Develop procurement project plan and strategy 	<ol style="list-style-type: none"> 1. Division with PMMD 2. Legal Services 3. Division 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 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, PMMD, Legal Services
4. Competition	<ol style="list-style-type: none"> 1. Issues solicitation to the market as per the appropriate procurement stream 2. Manages bid receipt and bid opening 	<ol style="list-style-type: none"> 1. PMMD 2. PMMD

	<ol style="list-style-type: none"> 3. Selection of an Evaluation Committee 4. Coordinates Evaluation Process 5. Manage pre-award dispute process 	<ol style="list-style-type: none"> 3. Division Project Lead with and PMMD 4. PMMD with Division 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. Issues Purchase Order 	<ol style="list-style-type: none"> 1. Division Head 2. PMMD and Legal Services 3. Approval authority under the Purchasing 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. Manages Debriefing Process 2. Manages 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. Manages delivery of the contract 2. Evaluations supplier performance 3. Manages Supplier Suspension Process 	<ol style="list-style-type: none"> 1. Division project lead 2. Division project lead 3. PMMD and Legal Services

Appendix "B" – Approval Authorities Table

Competitive Procurement – Invitational Solicitation vs Open Solicitation	
<u>Level</u>	<u>Conditions</u>
Division Heads	\$3,000 to \$50,000 in accordance with Divisional Purchasing Order Procedure
Purchasing and Materials Management Division	\$3,000 up to \$100,000 or above \$100,000 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 Award Authority	
<u>Level</u>	<u>Conditions</u>
Division Heads	Up to \$50,000 in accordance with Divisional Purchasing Order Procedure and with funding approval
Chief Purchasing Official	Up to \$500,000 with <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 or the projected term of capital funding approved by Council
Bid Award Panel	Up to \$20,000,000 with <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 or the

	projected term of capital funding approved by Council;
Bid Award Panel - Extended	<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 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	<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 years or the projected term of capital funding approved by Council
Council	<p>Any Dollar Value where:</p> <ul style="list-style-type: none"> ▪ Award not to supplier meeting specification or may not represent best value as defined in the Solicitation; ▪ No funding approval; ▪ Term of contract exceeds 5 years including option years or the projected term of capital funding approved by Council; ▪ Where the Chief Purchasing Official, in consultation with the City Solicitor, determine that given the material risk of the award it should be done by Council;

	<ul style="list-style-type: none"> ▪ Where the Chief 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 Authority	
<u>Level</u>	<u>Conditions</u>
Division Heads without the Chief 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 or the projected term of capital funding approved by Council.
Division Heads with the Chief 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 or the projected term of capital funding approved by Council.
City Council	<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 or the projected term of capital funding approved by Council.

Attachment 3 - Revisions to the Access to Information for Members of Council at Various Stages of the Procurement Process

1. Delete section 4 of the Revisions to the Access to Information for Members of Council at Various Stages of the Procurement Process which states the following:
 4. In instances where an industry consultation is conducted prior to a formal procurement process, the terms of reference for the particular consultation must be approved by Council and the terms of reference is to include:
 - the objective of the consultation;
 - the process and criteria used to invite the industry to the consultation;
 - staff and Councillor involvement;
 - the nature and process of City-industry information exchange;
 - the documentation and dissemination of the information exchanged; and
 - the reporting back to Council.Divisional staff are responsible for preparing this report in consultation with PMMD staff.'

This change is being recommended to allow staff to be more efficient in gathering information from the industry about a particular procurement, and is consistent with standard procurement processes.

Attachment 4 - Revisions to the Social Procurement Policy

Amend the Social Procurement Policy to reflect the ability to conduct limited solicitations (invitational 3 quotes) between \$50,000 and \$100,000 as follows:

1. Adding the following section to the Social Procurement Policy.

1.3 Increasing Access for Small and Medium Sized Businesses (\$50,000 up to and including \$100,000)

- 1.3.1 Purchasing and Materials Management shall review the list obtained under Section 1.2.1 and, where feasible, attempt to include at least one (1) submission from a diverse supplier when undertaking an invitational solicitation on behalf of a Division.
- 1.3.2 The procurement of construction services using the invitational solicitation (between \$50,000 and \$100,000) are exempted from this section.

2. Renumbering the existing sections 1.3 and 1.4 as appropriate and renaming section 1.3 to the following:

1.4 Encouraging Vendors to Develop Supply Chain Diversity Policies in purchases \$100,000 and above

1.5 Tied Bids