

Amendments to the Purchasing By-law

BCACG Meeting – May 30, 2016

Mike Pacholok, Director, Purchasing and Materials
Management

Purchasing By-law Revisions

- Overdue on the 5 year review
- Preparing for upcoming trade agreements
- Adopting a Supplier Code of Conduct
 - Consistent with Charbonneau Commission and Bellamy Inquiry
- Aligning with the Province's BPS Procurement Directive
- Providing clarity to the Purchasing By-law

Trade Agreements

- Comprehensive Economic Trade Agreement (CETA)
 - Ratification date unknown – expected end of 2016 or early 2017
 - Applies to G&S over \$340k approx., and Construction over \$8.5m
- Ontario Quebec Trade and Cooperation Agreement (OQTCA)
 - In effect for municipalities September 1, 2016
 - Based on CETA but lower thresholds - \$100k for both

Changes

- Provisions added/changed to address
 - Open Competitive Procurement above \$100k
 - Non-discrimination Provision
 - Timelines & Notice of Intended Procurements
 - Negotiations
 - Allow for use of CCDC-23 like approach as well
 - Pre-Award Disputes
 - Post-Award Disputes
 - Supplier Debriefings

Reinforcing Ethics

- Incorporation of a Supplier Code of Conduct into the Purchasing By-law
 - Based on Charbonneau Commission and Bellamy Inquiry
 - Many provisions already were in existing PMMD documents, but now elevated to By-law

Reinforcing Ethics

Provision	Tender Section	Provision	Tender Section
Honesty and Good Faith	Section 1, Articles 9, 16F & 16G	Gifts or favours Prohibited	Section 1, Article 15
Confidentiality	Section 1, Articles 24 and 25	Misrepresentations Prohibited	Section 1, Articles 16F & 16G, tender cover page
Conflicts of Interest & Unfair Advantage	Section 1, Article 23	Blackout period	Section 1, Article 7 & Procurement process policy
Collusion or Unethical Bidding Practices	Section 1, Article 14	Failure to Honour Bid	Section 1, Article 19
Illegality*	Section 1, Article 28	Past Performance	Procurement process policy
Interference Prohibited**	Similar to Gifts but otherwise new	Litigation with the City**	New

Reinforcing Ethics

- Suppliers will have to certify that they comply with the Supplier Code of Conduct
- New Provisions to allow:
 - the Chief Purchasing Official to disqualify a supplier for a breach of the code, or to terminate a contract
 - the Chief Purchasing Official to temporarily suspend a supplier for 6 months for a breach
 - Council can suspend suppliers for 1 to 5 years
- Revised Employee Ethics provision to align with the Toronto Public Service By-law

Suppliers in litigation with the City

- Revised since what was sent previously
- Change from suppliers in litigation with the City seeking pre-approval before bidding from the Treasurer
- Change to Treasurer, at its sole discretion, can disqualify a supplier in litigation with the City related to a contract awarded by the City on a case by case basis

Suppliers in litigation with the City

- Treasurer will consult with the City Solicitor and consider the non-exclusive factors:
 - Supplier's history of making frivolous or vexation claims, exaggerated damages
 - Outcome of prior litigation including whether legal costs have been awarded against the supplier or City
 - Is the supplier the only qualified supplier or in case of an emergency
 - Overall risk in relation to the total cost of the contract
 - Claims less than \$100,000
- Litigation related to bid disputes are not caught by this article

Next Steps

- Revised Purchasing By-law, Procurement Processes Policy and Consequential Amendments will come into force on January 1, 2017, if approved by Council in July
- Purchasing and Materials Management and Legal Services will work on revising existing procedures and creating new procedures to reflect the changes to the By-law and Policies.

Unbalanced Bid Analysis

Unbalanced Bid Analysis

- City's had a provision about unbalanced bidding since 2008
- A bid may be deemed unbalanced when:
 - (1) it 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 [*Mathematically Unbalanced Bid*¹]; and
 - (2) 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 [*Materially Unbalanced Bid*²]; or
 - (3) it is so unbalanced as to be tantamount to allowing an advance payment [*Front-end loading*³]

Unbalanced Bid Analysis

- Procedure based on unbalanced bid analysis from the U.S. - USDOT, Wisconsin DOT
- Procedure designed to clarify for the City steps to take when unbalanced bid detected.
- Unbalanced Bidding not illegal but City has to ensure that bids received represent best value

Unbalanced Bid Analysis

- 1) Determination of a Significant Item - An individual item will be considered significant to the contract if a bidder has an item included in the proposal where the difference between the total cost of the item and the item estimate, expressed as a percent of the estimated total contract cost, is greater than or less than 0.50% for contracts less than \$2,000,000 and greater than or less than 0.25% for contracts \$2,000,000 and larger.
- 2) Determination of a Mathematically Unbalanced Bid - An item will be considered mathematically unbalanced bid if the difference between the low bidder's unit price and the unit price estimate, expressed as a percent of the unit price estimate, is greater than +50% or is less than -75%.
- 3) Any items where both 1 & 2 are true.

Unbalanced Bid Analysis

ITEM	Description	Unit	Estimate			Contractor Y Bid		Unbalanced Bid Analysis		
			Est. Quantity (A)	Price Estimate (B)	Total Est.(AxB)	Bid Price (Y)	Total Price (AxY)	Significant to overall value of bid?	Unbalanced?	Significantly Unbalanced
1	Project Coordinator (REG)	HR	500	\$ 51.50	\$ 25,750.00	\$ 62.20	\$ 31,100.00	TRUE	FALSE	FALSE
2	Foreman (REG)	HR	500	\$ 79.61	\$ 39,805.00	\$ 76.75	\$ 38,375.00	TRUE	FALSE	FALSE
3	Labourer (REG)	HR	1250	\$ 50.50	\$ 63,125.00	\$ 117.50	\$ 146,875.00	TRUE	TRUE	TRUE
4	Apprentice (REG)	HR	700	\$ 43.85	\$ 30,695.00	\$ -	\$ -	TRUE	TRUE	TRUE
5	Project Coordinator (PREM)	HR	45	\$ 77.25	\$ 3,476.25	\$ 71.50	\$ 3,217.50	FALSE	FALSE	FALSE
6	Foreman (PREM)	HR	45	\$ 119.41	\$ 5,373.45	\$ 115.12	\$ 5,180.40	FALSE	FALSE	FALSE
8	Labourer (PREM)	HR	300	\$ 101.70	\$ 30,510.00	\$ 117.50	\$ 35,250.00	TRUE	FALSE	FALSE
9	Apprentice (PREM)	HR	200	\$ 68.00	\$ 13,600.00	\$ -	\$ -	TRUE	TRUE	TRUE
					\$212,334.70		\$259,997.90			
					0.005					

ITEM	Description	Unit	Estimate			Contractor Z Bid		Unbalanced Bid Analysis		
			Est. Quantity (A)	Price Estimate (B)	Total Est.(AxB)	Bid Price (Z)	Total Price (AxZ)	Significant to overall value of bid?	Unbalanced?	Significantly Unbalanced
1	Project Coordinator (REG)	HR	500	\$ 51.50	\$ 25,750.00	\$ 69.00	\$ 34,500.00	TRUE	FALSE	FALSE
2	Foreman (REG)	HR	500	\$ 79.61	\$ 39,805.00	\$ 85.00	\$ 42,500.00	TRUE	FALSE	FALSE
3	Labourer (REG)	HR	1250	\$ 50.50	\$ 63,125.00	\$ 71.00	\$ 88,750.00	TRUE	FALSE	FALSE
4	Apprentice (REG)	HR	700	\$ 43.85	\$ 30,695.00	\$ 55.45	\$ 38,815.00	TRUE	FALSE	FALSE
5	Project Coordinator (PREM)	HR	45	\$ 77.25	\$ 3,476.25	\$ 103.50	\$ 4,657.50	TRUE	FALSE	FALSE
6	Foreman (PREM)	HR	45	\$ 119.41	\$ 5,373.45	\$ 127.50	\$ 5,737.50	FALSE	FALSE	FALSE
8	Labourer (PREM)	HR	300	\$ 101.70	\$ 30,510.00	\$ 106.50	\$ 31,950.00	TRUE	FALSE	FALSE
9	Apprentice (PREM)	HR	200	\$ 68.00	\$ 13,600.00	\$ 79.95	\$ 15,990.00	TRUE	FALSE	FALSE
					\$212,334.70		\$262,900.00			
					0.005					