



Pre-Award and Post-Award Bid Dispute Procedure

PROCEDURE

Responsible Division: Purchasing & Materials Management
Responsible Official: Chief Purchasing Official

Effective Date: January 1, 2017
Last Revision Date: December 14, 2016

Description

To ensure supplier bid disputes, either pre-award or post-award of the solicitation, are dealt with objectively, fairly, openly and with transparency and that suppliers understand the available resolutions available to resolve a Pre-Award or Post-Award Bid Dispute.

Related Bylaws & Policies

Toronto Municipal Code Chapter 195 - Purchasing adopted as amended, by City of Toronto Council on July 12, 13, 14 and 15, 2016.

Procedure

1. Pre-award Bid Disputes

- 1.1. If a Supplier has a dispute with the competitive call process, prior to the award of the competitive call (a "Pre-Award Dispute"), the Supplier should contact the Chief Purchasing Official by email.
 - 1.1.1. Types of Pre-Award Disputes could include, but are not limited to disputes about bias specifications, bias evaluation criteria or about being declared non-compliant.
- 1.2. The Pre-Award Dispute email subject line should indicate Call Number and Pre-Award Bid Dispute (e.g. RFP XXXX-16-XXXX, Pre-Award Bid Dispute) and should contain the following information:
 - 1.2.1. The name of the call and the associated call number;
 - 1.2.2. A specific description of each act or omission alleged to have materially breached the procurement process;
 - 1.2.3. A specific identification of the provision in the solicitation or procurement procedure that is alleged to have been breached;
 - 1.2.4. A precise statement of the relevant facts;
 - 1.2.5. The supplier's arguments, including any relevant supporting documentation; and
 - 1.2.6. The supplier's requested remedial action.

- 1.3. The Pre-Award Dispute email should be sent to the Chief Purchasing Official as soon as possible from the time when the basis for the dispute was known to the Supplier, and in the case where the Supplier has been declared non-compliant, within five (5) business days of being declared non-compliant.
- 1.4. Due to section 195-13.9 of Chapter 195, Purchasing, the Supplier must only send the Pre-Award Dispute to the Chief Purchasing Official, as the supplier will be under a prohibition on communicating with any other employee, public officer holder or the media in relation to the procurement except for the Chief Purchasing Official or other designated employee as set out in the call document.
- 1.5. The Chief Purchasing Official will acknowledge receipt of the Pre-Award Dispute email and indicate to the Supplier an expected response time to the Pre-Award Dispute.
- 1.6. The Chief Purchasing Official will have the bid dispute logged and tracked.
- 1.7. The Chief Purchasing Official may delay an award, or any interim stage of a procurement, pending the resolution of any Pre-Award Dispute.
- 1.8. The Chief Purchasing Official, in consultation with the Purchasing Manager and the City Solicitor as required, will review the call document file in light of the Pre-Award Dispute to determine the appropriate remedy including:
 - 1.8.1. To dismiss the pre-award dispute;
 - 1.8.2. To accept the pre-award dispute and take the appropriate remedial action, including, but not limited to, reinstating the Supplier into the competition or cancelling the call; or
 - 1.8.3. To have Council decide on the award if the proposed remedial action were to affect the outcome of the call.
- 1.9. In considering the Supplier's Pre-Award Dispute, the Chief Purchasing Official may consider, but is not limited to, the following depending on the circumstances and facts of the Pre-Award Dispute:
 - 1.9.1.the Major and Minor Bid Irregularities Procedure;
 - 1.9.2.the evaluation criteria disclosed in the solicitation document;
 - 1.9.3.whether the City followed the rules of the procurement as set out in the solicitation document; and
 - 1.9.4.whether the technical requirements or specifications are discriminatory as guided by the Procurement Processes Policy.
- 1.10. After the Chief Purchasing Official concludes the review of the Pre-Award Dispute, the Chief Purchasing Official will inform the Supplier of the resolution and direct staff accordingly. The Chief Purchasing Official will also notify the Supplier of their ability to have the dispute reviewed by the Treasurer as a post-award bid dispute, if the Chief Purchasing Official dismisses the pre-award dispute.
- 1.11. The Chief Purchasing Official will notify any other Suppliers involved in the procurement as required depending on the results of the Chief Purchasing Official's review.

2. Post-award Bid Disputes

- 2.1. If a Supplier has a dispute with the competitive call process that is valued over \$100,000, after the award of the competitive call (a "Post-Award Dispute"), the Supplier should contact the Chief Purchasing Official by email no later than ten (10) business days after the date of the award notification, or where a debriefing has been requested, no later than five (5) business days after such debriefing is received.
- 2.2. Any dispute that is not received in the time lines indicated or in writing will not receive further consideration.
- 2.3. The Post-Award Dispute email subject line should indicate Call Number and Pre-Award Bid Dispute (e.g. RFP XXXX-16-XXXX, Post-Award Bid Dispute) should set out the following information:
 - 2.3.1. The name of the call and the associated call number;
 - 2.3.2. A specific description of each act or omission alleged to have materially breached the procurement process;
 - 2.3.3. A specific identification of the provision in the solicitation or procurement procedure that is alleged to have been breached;
 - 2.3.4. A precise statement of the relevant facts;
 - 2.3.5. The supplier's arguments, including any relevant supporting documentation; and
 - 2.3.6. The supplier's requested remedial action.
- 2.4. The Chief Purchasing Official will acknowledge receipt of the Post-Award Dispute email and indicate to the Supplier an expected response time to the Post-Award Dispute.
- 2.5. The Chief Purchasing Official will have the dispute tracked and logged.
- 2.6. The Chief Purchasing Official, will review the call document file in light of the Post-Award Dispute and consult with the Supplier to determine how to resolve the Post-Award Dispute.
- 2.7. If the Chief Purchasing Official cannot resolve the Post-Award Dispute with the Supplier, the Chief Purchasing Official will refer the Post-Award Dispute to the City Treasurer, or their designate(s), for an impartial review, based on the following information:
 - 2.7.1. The name of the call and the associated call number;
 - 2.7.2. A specific description of each act or omission alleged to have materially breached the procurement process;
 - 2.7.3. A specific identification of the provision in the solicitation or procurement procedure that is alleged to have been breached;
 - 2.7.4. A precise statement of the relevant facts;
 - 2.7.5. The supplier's arguments, including any relevant supporting documentation; and
 - 2.7.6. The supplier's requested remedial action.
- 2.8. The Treasurer or their designate(s), in consultation with the City Solicitor will review the Post-Award Dispute. To assist the review, the Treasurer or their designate may task a different

Purchasing Manager, one who had no knowledge of the file, to review the file and provide advice to the Treasurer with respect to the Post-Award Dispute.

2.9. The Treasurer, based on their review of the Post-Award Dispute, or review of the advice from the Purchasing Manager may:

2.9.1. Dismiss the post-award dispute; or

2.9.2. Accept the post-award dispute and direct the Chief Purchasing Official to take the appropriate remedial action, including, but not limited to, rescinding the award and any executed contract and cancelling the call.

2.10. In considering the Supplier's Post-Award Dispute, the Treasurer may consider, but is not limited to, the following depending on the circumstances and facts of the Post-Award Dispute:

2.10.1. the Major and Minor Bid Irregularities Procedure;

2.10.2. the evaluation criteria disclosed in the solicitation document;

2.10.3. whether the City followed the rules of the procurement as set out in the solicitation document; and

2.10.4. whether the technical requirements or specifications are discriminatory as guided by the Procurement Processes Policy.

2.11. The Treasurer, or their designate, will inform the Supplier of the final decision.

2.12. The Supplier cannot appeal the decision of the Treasurer to another City Official, but is entitled to pursue any necessary legal action, such as judicial review or other appropriate legal remedy, as they deem fit.

Questions? Contact

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