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CHAPTER 195

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[History: Adopted by City of Toronto Council on October 7, 2016 by By-law No. 960-2016¹. Amendments noted where applicable.]

General References

City of Toronto Act, 2006 - See S.O. 2006, c. 11.

Municipal Freedom of Information and Protection of Privacy Act, 1990 - See R.S.O. 1990, c. M.56.

¹ Editor's Note: By-law 960-2016 repealed and replaced Chapter 195, Purchasing, in its entirety. By-law 960-2016 and this new Chapter came into effect January 1, 2017.

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ARTICLE 1

Purpose

§ 195-1.1. Purpose.

The purpose of this chapter is to:

- 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.

ARTICLE 2

Interpretation

§ 195-2.1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ACCOUNTABILITY - The Auditor General, Integrity Commissioner, Lobbyist Registrar or Ombudsman appointed by Council under Part V, Accountability and Transparency, of the City of Toronto Act, 2006.

AFFILIATED PERSON - Everyone related to the supplier including, but not limited to employees, agents, representatives, organizations, bodies corporate, societies, companies, firms, partnerships, associations of persons, parent companies, and subsidiaries, whether partly or wholly-owned, as well as individuals, and directors, if:

- A. Directly or indirectly either one controls or has the power to control the other, or
- B. A third party has the power to control both.

AWARD - The formal acceptance of a bid that results in a contract.

BEST VALUE - The optimal balance of performance and cost determined in accordance with pre-determined evaluation criteria disclosed in a solicitation for the purpose of making an award. For competitive procurements best value is represented by the highest ranked bid, which may include, for request for tenders and request for quotations, the lowest cost bid meeting technical specifications and supplier qualifications.

BID - A submission in response to a solicitation, and includes a tender, a quotation or a proposal.

BID AWARD PANEL - The bid award panel established under Article 5.

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BUYING GROUP - A group of two or more members that combines the purchasing requirements and activities of the members of the group into one joint procurement process.

CITY SOLICITOR - The person with full charge and control for the conduct of the Legal Services Division of the City.

CHIEF PURCHASING OFFICIAL - The person designated to undertake the responsibilities of the chief purchasing official of the City.

COMPETITIVE PROCUREMENT - A solicitation where suppliers are given an equal opportunity to bid, whether by invitation or by advertisement to the public, and which may include a process for conducting negotiations with one or more suppliers.

CONFLICT OF INTEREST or UNFAIR ADVANTAGE:

- A. In relation to a procurement process, a supplier that has, or is seen to have, an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to:
 - (1) Having, or having access to, confidential information of the City in the preparation of its bid that is not available to other suppliers, or
 - (2) Communicating with any person with a view to influencing preferred treatment in the procurement process (including but not limited to the lobbying of decision makers involved in the procurement process), or
 - (3) Engaging in conduct that compromises, or could be seen to compromise, the integrity of the procurement process; or

- B. In relation to the performance of the contract that is the subject of a procurement, that the supplier's other commitments, relationships or financial interests:
 - (1) Could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement, or
 - (2) Could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

CONSTRUCTION SERVICE - A service that has as its objective the realization of civil or building works.

CONTRACT - An agreement between the City and a supplier for the procurement of goods and services.

CO-OPERATIVE PURCHASING - A competitive procurement process that is conducted by one public body or buying group on behalf of one or more public bodies in order to obtain the benefits of volume purchases and administrative efficiency.

DIVISION - A division of the City established under the authority of Council.

DIVISION HEAD - The City official directly responsible for any division.

ELECTRONIC TENDERING SYSTEM - A computer-based system that provides suppliers with access to information related to open competitive procurements.

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EMERGENCY - Any situation of extreme urgency brought about by unforeseeable events that makes the procurement of goods and services necessary to address an immediate risk to health, safety, security, property, the environment or other public interests of the City.

EVALUATION CRITERIA - The rated criteria set out in a notice of intended procurement or solicitation which may include but is not limited to supplier qualifications, price and other cost or value factors, quality, technical merit, environmental characteristics, and negotiable commercial terms such as terms of delivery.

FORM OF CONTRACT - A formal written document or documents, including a purchase order, that outlines all the terms and conditions of a contract.

FUNDING APPROVAL –

A. In relation to a capital project as defined in Chapter 71, Financial Control:

Inclusion of the capital project in a capital budget approved by Council and where the Chief Financial Officer provides written confirmation that he or she is satisfied that:

- (1) The entire capital expenditure for the capital project is identified in the budget at an appropriate capital project or subproject level; and
- (2) The capital project's cash flow funding is available in an appropriate account.

B. In relation to other than a capital project:

- (1) Funding approval of the relevant operating program by the Council adoption of interim or final operating budgets and where the Chief Financial Officer provides written confirmation that he or she is satisfied that the funding of the contract, or the first year of a multi-year contract, is available in an appropriate account; or
- (2) In a situation where Council has not yet adopted an interim or final operating budget:
 - (a) The written confirmation of a division head that the contract is in respect of necessary current and ongoing division operations and that the subject matter of the contract was contained in a program that had funding approval in the prior year; and
 - (b) The written confirmation of the Chief Financial Officer that the funding of the contract can be undertaken to his or her satisfaction.

GOODS - Moveable property (including the costs of installing, operating, maintaining or manufacturing such moveable property) and includes raw materials, products, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a general construction contract.

INELIGIBLE SUPPLIER - A supplier that has been convicted of charges as described in § 195-13.5.

LIMITED SOLICITATION - A competitive or non-competitive solicitation method where one or more suppliers of the City's choice are invited and given an equal opportunity to bid to the solicitation.

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MAJOR IRREGULARITY - A deviation from the requirements in a solicitation which:

- A. Affects the substance, as opposed to the form, of a bid in terms of the price, quality, quantity or delivery and is material to the award; or
- B. Could provide a supplier who has submitted a request with an unfair advantage over competitors; and
- C. May include, but is not limited to, a late submission, unclear or materially unbalanced pricing information, inadequate amount or terms of bid security, and any other matter identified as materially warranting rejection in the solicitation issued by the City.

MINOR IRREGULARITY - A deviation from the requirements in a solicitation which:

- A. Affects the form as opposed to the substance of a bid response in terms of the price, quality, quantity or delivery and is not material to the award; and
- B. Could not provide a supplier who has submitted a bid with an unfair advantage over competitors; and
- C. Any other matter identified as being subject to clarification or rectification in the solicitation issued by the City.

MULTI-USE LIST - A list of suppliers that the City has determined satisfy the conditions for participation in that list, and that the City intends to use more than once for selective solicitations.

NON-COMPETITIVE PROCUREMENT - A procurement negotiated directly from one or more suppliers, but does not include negotiations provided for under the terms of a competitive solicitation.

NOTICE OF INTENDED PROCUREMENT - A written notice published by the City, inviting interested suppliers to submit a bid in response to a solicitation.

OPEN COMPETITIVE PROCUREMENT - A competitive solicitation method, where a notice of intended procurement is advertised to the public, giving all suppliers an equal opportunity to bid to the solicitation and prove their qualifications.

PRE-QUALIFIED SUPPLIER - A supplier who has submitted a response to an advertised request for pre-qualifications and has been determined to have met the minimum disclosed standards for technical qualifications and professional competence, and has the necessary equipment, facilities and experience for specific future solicitations.

PROCUREMENT - The acquisition of goods and/or services by any contractual means, including purchase, rental, lease or conditional sale.

PROCUREMENT POLICIES - The written policies approved by Council that are intended to supplement this Chapter.

PROCUREMENT PROCEDURES - The written procedures supporting the application of this chapter and the procurement policies, as approved by the Chief Purchasing Official in accordance with this Chapter.

PROCUREMENT PROCESS - The process that begins after the City has decided on its requirement and continues through to and including contract award and execution.

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PROJECT LEAD - The employee in a division that has been assigned the responsibility by the division head for the procurement of goods and/or services and the management of the resulting contract with a supplier.

PUBLIC BODY - Any government or government agency, municipality or local board, commission or non-profit corporation carrying out a public function, and includes any corporation of which the City is a shareholder.

PUBLIC OFFICE HOLDER - Has the meaning provided in section 156 of the City of Toronto Act, 2006, and includes:

- A. A member of Council and any person on his or her staff;
- B. An officer or employee of the City;
- C. A member of a local board (restricted definition) of the City and any person on his or her staff;
- D. An officer, director or employee of a local board (restricted definition) of the City; and
- E. Such other persons as may be determined by Council who are appointed to any office or body by Council or by a local board (restricted definition) of the City.

PURCHASE ORDER - A document issued to a supplier under the authority of the Chief Purchasing Official that sets out the terms and conditions applicable to the supply of goods and services by a supplier, including reference to any other contract documents and the contract value.

REQUEST FOR EXPRESSION OF INTEREST (REOI) - A solicitation method used to gather information on future supplier interest in an opportunity; or, information on supplier capabilities/qualifications for the purpose of better planning the supplier qualification requirements of a future solicitation that may result in an award.

REQUEST FOR INFORMATION (RFI) - A solicitation issued to potential future suppliers to gather general supplier, service or product information. It is a procurement procedure where suppliers are provided with a general or preliminary description of a problem or need and are requested to provide information or advice about how to better define the problem or need, or alternative solutions and costs, for the purpose of better planning the technical specification requirements of a future solicitation that may result in an award.

REQUEST FOR PROPOSALS (RFP) - A solicitation issued to obtain bids or proposals where a procurement need is identified, but how it will be achieved is unknown at the outset, which allows suppliers to propose solutions or delivery methods to arrive at the desired result. The evaluation criteria to determine best value may include more than price factors and the solicitation 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 following the process outlined in the solicitation.

REQUEST FOR QUOTATIONS (RFQ) - A solicitation issued to obtain competitive bids for standard goods and/or services where the City has pre-determined the required quantity and/or quality of the goods or services and the evaluation criteria to determine the best value is generally the lowest cost bid meeting technical specifications without any material contract negotiations.

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REQUEST FOR SUPPLIER QUALIFICATIONS (RFSQ) - A solicitation that is issued to gather submission information on supplier capabilities and qualifications with the intention of creating a list of pre-qualified suppliers for future selective solicitations, including:

- A. A one-time future solicitation; or
- B. A multi-use list for solicitations of a predefined scope and duration.

REQUEST FOR TENDERS (RFT) - A solicitation that is generally issued in order to obtain irrevocable competitive bids for standard construction services where the City 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.

SELECTIVE SOLICITATION - An open competitive solicitation method where suppliers are first prequalified through a request for supplier prequalification and then only pre-qualified suppliers are invited to bid.

SERVICES - All services, including construction services, unless otherwise specified.

SOLICITATION - A written notice to suppliers, whether or not it is publically advertised or intended to result in a contract, and includes a:

- A. Request for expressions of interest (REOI);
- B. Request for information (RFI);
- C. Request for supplier prequalification (RFSQ);
- D. Request for proposals (RFP);
- E. Request for quotations (RFQ); and
- F. Request for tenders (RFT).

SUPPLIER - A person or group of persons that provides or could provide goods or services.

SUPPLIER DEBRIEFING - A practice of informing a supplier why their bid was not selected upon completion of the contract award process.

SUSPENDED SUPPLIER - A supplier that has been suspended for any duration from bidding on future solicitations under § 195-13.14.

TECHNICAL SPECIFICATION - A solicitation requirement that:

- A. Lays down the characteristics of a good or a service to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or
- B. Addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or a service.

TREASURER - A person appointed to the management position of Treasurer in the City's administrative organization and who has also been appointed as a deputy treasurer under section 138 of the City of Toronto Act, 2006.

VALUE or PROCUREMENT VALUE - The estimated maximum total value of the procurement over its entire duration, taking into account all forms of remuneration, including:

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- A. Premiums, fees, commissions and interest; and
- B. Where the solicitation provides for the possibility of options, the total value of such options.

§ 195-2.2. Monetary references.

All references in this chapter to dollar amounts are to Canadian dollars and shall be exclusive of taxes unless otherwise provided.

§ 195-2.3. Application - general.

All goods and services required by the City and its divisions shall be acquired and disposed of in accordance with the provisions of this chapter, any procurement policies approved by Council and any procurement procedures established by the Chief Purchasing Official.

§ 195-2.4. Application to Accountability Officers.

This chapter also applies to Accountability Officers, with such modifications as are necessary for them to carry out their independent statutory functions under Part V, Accountability and Transparency, of the City of Toronto Act, 2006 and Chapter 3, Accountability Officers.

§ 195-2.5. Exemptions.

This chapter does not apply to:

- A. The acquisition or rental of land, existing buildings or other immovable property or other related real estate rights;
- B. City employment contracts;
- C. Any form of assistance that the City provides, including co-operative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;
- D. Procurement between the City and another public body;
- E. 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;
- F. 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
- G. Those other items listed in Schedule A of Chapter 71, Financial Control.

ARTICLE 3

Responsibilities of Chief Purchasing Official

§ 195-3.1. General duties and responsibilities.

The Chief Purchasing Official shall have the authority and responsibility, subject to Council policies, for the following:

- A. Approving and prescribing procurement procedures not specifically provided for in this chapter or the procurement policies, in consultation with division heads and the City Solicitor;

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- B. Coordinating solicitations on behalf of the City, except for:
 - (1) Procurements valued up to \$50,000 undertaken by divisions in compliance with procurement policies and procedures;
 - (2) Non-competitive contracts to procure goods and services in an emergency that would not reasonably permit a competitive solicitation;
 - (3) Solicitations undertaken by an Accountability Officer for the purpose of carrying out their independent statutory functions in confidence; or
 - (4) Those goods and services listed in Schedule A of Chapter 71, Financial Control.
- C. Determining the appropriate form and method of solicitation by which all goods and services shall be procured on behalf of the City, including, without limitation, by electronic methods;
- D. Establishing templates for common or repetitive solicitations;
- E. Administering solicitations, including advertising of notices, up to finalization of an agreement, including:
 - (1) Receipt, custody and security of all submissions and specified evaluation documentation;
 - (2) Rejecting submissions made by suppliers that have been suspended from bidding, or that are otherwise in contravention of this chapter or Council policy regarding supplier eligibility and conduct;
 - (3) Assessing compliance with mandatory requirements by determining whether irregularities are major or minor and rejecting submissions with major irregularities;
 - (4) Overseeing the evaluation of submissions;
 - (5) Communicating with suppliers after issuance of a solicitation up to the finalization of an award; and
 - (6) Otherwise managing the remainder of the process through award and final contract execution or purchase order issuance.
- F. Overseeing the disposition of goods which have been declared surplus by the relevant division head;
- G. Developing co-operative purchasing plans with other public bodies;
- H. Compiling and maintaining a collection of all policies adopted by Council from time to time affecting the procurement process;
- I. Providing information to suppliers in relation to this chapter, procurement policies, procedures and related templates, tools, systems and practices;
- J. Providing relevant training for any division staff responsible for or involved in the procurement process;

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- K. Providing professional advice and guidance, including strategic advice in relation to planning an appropriate solicitation method and developing rated or other relevant evaluation criteria or related supplier performance and contract implementation;
- L. Reporting to the Bid Award Panel on all solicitations where the Bid Award Panel has authority to make an Award;
- M. Providing advice and support to the Bid Award Panel;
- N. Reporting on, along with the division head that initiated the solicitation, all awards not subject to approval by the Bid Award Panel to the appropriate Standing Committee;
- O. Reporting to suppliers and the public on the award of each procurement valued over \$100,000 including any essential information as may be prescribed;
- P. Maintaining and publishing a list of suspended or ineligible suppliers;
- Q. Generally monitoring, supervising and reporting to the Government Management Committee, as required from time to time, on the procurement process;
- R. Undertaking a comprehensive review of this chapter and all policies affecting the procurement process every five (5) years; and
- S. Delegating to any or all division heads any aspect of the procurement process as the Chief Purchasing Official may deem reasonable.

ARTICLE 4
Responsibilities of Divisions

§ 195-4.1. Division head responsibilities.

Division heads or their delegate(s) shall be responsible for:

- A. Ensuring division staff involved in procurement receive appropriate training;
- B. Advising the Purchasing and Materials Management Division of divisional procurement plans and specific upcoming procurements and allowing sufficient time to complete the procurement as may be stipulated in the procurement policies or procurement procedures;
- C. 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;
- D. Ensuring that procurements valued up to \$50,000 made by division staff are made in compliance with the requirements of this chapter and Chapter 71, Financial Control;
- E. Ensuring that goods and services are legitimately required for City purposes prior to the issuance of any solicitation;
- F. 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;
- G. 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

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changes are approved only in accordance with the requirements of Chapter 71, Financial Control;

- H. Considering short and long-term requirements with respect to quantities and time lines or total project costs;
- I. Considering the cost of ongoing maintenance, support and licensing and other requirements;
- J. Consulting with the Information and Technology Division of the City if 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
- K. Selection of an appropriate division project lead.

§ 195-4.2. Division project lead responsibilities.

Project leads shall be responsible for:

- A. Preparing technical specifications, quantity requirements and scope of work for solicitations;
- B. Identifying areas for continuous improvement in template documents in relation to non-routine procurements in order that appropriate terms and conditions can be developed by the Purchasing and Materials Management Division in consultation with the Insurance and Risk Management Division and the City Solicitor;
- C. Ensuring that goods and services, and their suppliers, conform with contract terms, conditions and technical specifications when the goods and services are first received and throughout the term of a contract; and
- D. Managing the contract up to completion of the performance of all contractual obligations of the supplier and the City, including payment and obtaining necessary approvals for such actions as early termination or contract amendments due to proposed increases to the contract value in accordance with Chapter 71, Financial Control.

ARTICLE 5
Bid Award Panel

§ 195-5.1. Bid Award Panel composition.

The Bid Award Panel is composed of the following persons or their respective designates:

- A. The City Manager;
- B. The Deputy City Manager and Chief Financial Officer;
- C. The Deputy City Manager, Cluster A; and
- D. The Deputy City Manager, Cluster B.

§ 195-5.2. Staff responsibilities.

- A. The City Manager or their designate shall be the Chair of the Bid Award Panel.

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- B. The City Clerk or their designate is responsible for:
- (1) Scheduling, in consultation with the Chief Purchasing Official, the place, date and time for the Bid Award Panel;
 - (2) Establishing and enforcing deadlines for agenda business;
 - (3) Providing appropriate meeting notice;
 - (4) Publishing the agenda for each Bid Award Panel;
 - (5) Taking minutes and keeping a record of all the proceedings of the Bid Award Panel;
 - (6) Publishing the minutes for each Bid Award Panel meeting; and
 - (7) Recommending such other procedures as are necessary for the efficient running of the Bid Award Panel.
- C. The City Solicitor, or their designate, provides legal advice to the Bid Award Panel.

§ 195-5.3. Bid Award Panel procedures.

The procedures of the Bid Award Panel shall include, at a minimum, the following:

- A. Three (3) members of the Bid Award Panel must be present for quorum.
- B. All decisions of the Bid Award Panel shall be made at meetings open to the public and published electronically subject to the confidentiality provisions of the Municipal Freedom of Information and Protection of Privacy Act, 1990 and of the City of Toronto Act, 2006.
- C. The Bid Award Panel does not hear public presentations.
- D. The decisions of the Bid Award Panel to approve any award shall be made by a unanimous vote.

ARTICLE 6
Standard Procurement Methods

§ 195-6.1. Information gathering.

Prior to issuing a competitive solicitation, the following solicitation documents may be issued for the purpose of gathering information:

- A. A request for information (RFI); or
- B. A request for expressions of interest (REOI).

The receipt of a submission in response to a request for information or request for expressions of interest does not create a legal contract.

§ 195-6.2. Pre-qualification for selective solicitations.

A request for supplier pre-qualification (RFSQ) may be used for selective solicitations to establish a list of pre-qualified suppliers that will later be eligible to respond to:

- A. A specific solicitation; or

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- B. A multi-use list.

The selection of a supplier for a list of pre-qualified suppliers does not create a legal contract by the City with any listed supplier.

§ 195-6.3. Competitive solicitations.

A competitive solicitation method must be used for any procurement, unless one or more of the exceptions for using a non-competitive procurement described in this chapter exist. Competitive solicitation methods include, but are not limited to the following:

- A. Requests for tender (RFT);
- B. Requests for quotations (RFQ);
- C. Requests for proposals (RFP);
- D. Requests for supplier Pre-qualification (RFSQ); and
- E. Any multi-stage procurement involving a combination of these competitive solicitation methods.

§ 195-6.4. Notices of intended procurement.

A notice of intended procurement must be advertised and published on an electronic tendering system easily accessible to suppliers of the City for the following solicitations:

- A. Procurements valued over \$100,000; or
- B. A request for supplier pre-qualification for selective solicitations.

§ 195-6.5. Co-operative purchasing.

The Chief Purchasing Official may make arrangements with one or more public bodies for co-operative procurement where there are economic advantages in so doing, provided that if the procurement is to be conducted by other public bodies, the Chief Purchasing Official determines that:

- A. The method of procurement used by the other public body is a competitive method consistent with that described in this chapter; and
- B. The awarding, reporting and execution of contracts resulting from the cooperative procurement is in accordance with the requirements of this by-law and the procurement procedures.

Such solicitations shall be conducted and contracts executed in accordance with the applicable authority for competitive procurements as set out in this chapter and in Chapter 71, Financial Control.

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§ 195-6.6. Procurement of same goods and services as public body.

Notwithstanding any other provision of this chapter, a procurement may be made directly from a supplier of another public body, if the Chief Purchasing Official determines that the public body followed a competitive method consistent with that described in this chapter, and the following additional conditions exist:

- A. The resulting contract between the public body and the supplier stipulates that the same goods and/or services be made available to other public bodies which include the City at the same price as provided by the supplier to the initiating public body;
- B. The same goods and/or services will be made available to the City for the same or better price than the price that is to be paid by the public body;
- C. The purchase of goods and/or services by the City is within funding approval; and
- D. The supplier is not ineligible, suspended or otherwise in contravention of this chapter.

The award and contract execution in relation to a procurement made by another public body shall otherwise be in accordance with the authorities applicable to a competitive solicitation as set out in this chapter and in Chapter 71, Financial Control.

ARTICLE 7

Non-competitive or Limited solicitations

§ 195-7.1. Non-competitive procurement exceptions.

A non-competitive procurement may be undertaken 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:

- A. A statutory or market-based monopoly;
- B. An absence of competition in the market for technical reasons;
- C. The existence of exclusive rights such as patent, copyright, license or warranty restrictions;
- D. Procurement of a work of art;
- E. Additional deliveries by an original supplier of goods and services that were not included in the original procurement, but a change cannot be made for economic or technical reasons without causing significant inconvenience or substantial duplication of costs for the City;
- F. An attempt to procure the required goods or services by soliciting competitive submissions has been made in good faith, but has failed to identify a compliant submission or qualified supplier, or where the submissions received have been collusive;
- G. The goods or services are required as a result of an emergency which would not reasonably permit the solicitation of competitive submissions;
- H. 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;

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- I. 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;
- J. It is advantageous to the City to acquire the goods or services from another public body;
- K. Another organization is funding, or substantially funding, the procurement and the City has determined that the supplier and the terms and conditions of the proposed contract are beneficial to the City;
- L. 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;
- M. A contract to be awarded to the winner of a design contest, provided that:
 - (1) The contest is organized in a manner that is consistent with the principle of fair competition contained in this policy, in particular relating to public advertising; and
 - (2) The participants are judged by an independent jury with a view to design contract being awarded to a winner;
- N. Procurement 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;
- O. Goods purchased on a commodity market; or
- P. Such other non-competitive procurement exemptions authorized by Council.

§ 195-7.2. Limited solicitation exceptions.

A limited solicitation may be undertaken in the following circumstances:

- A. Any procurement valued under \$100,000; or
- B. The confidential nature of the requirement is such that it would not be in the public interest to solicit competitive submissions.

§ 195-7.3. Non-competitive or limited solicitation contract authority – general.

A contract may be awarded in relation to a non-competitive or limited solicitation procurement process by:

- A. The division head of the user division for a procurement of up to \$50,000;
- B. The division head and the Chief Purchasing Official for a procurement of up to \$100,000;
- C. The City Manager and the Chief Purchasing Official for a procurement of up to \$500,000; and
- D. Standing Committee and Council for all procurement up to or over \$500,000, or where the term of the contract exceeds five (5) years or exceeds the projected capital funding for the project as approved by Council.

§ 195-7.4. Non-competitive or limited solicitation contract authority - emergency.

- A. The City Manager or any division head may approve and enter into a contract in relation to a non-competitive procurement of goods or services required in an emergency of not

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more than \$500,000 or their delegated spending authority as provided for in Chapter 71, Financial Control.

- B. Where the potential value of the non-competitive contract exceeds \$500,000 or the delegated spending authority of the City Manager or any division head, the Chief Purchasing Official and the City Manager or division head shall report jointly to Council through the Government Management Committee as soon as practical and not later than the second regular meeting of Council after entering into the contract.

ARTICLE 8
Open Competitive Awards

§ 195-8.1. Authority to award - Chief Purchasing Official.

The Chief Purchasing Official shall be authorized to make an award upon the recommendation of the division head who initiated the competitive procurement, provided that the following conditions are met:

- A. The award is to the supplier whose response meets the specifications and qualification requirements set out in the solicitation and whose response represents the best value to the City based on the evaluation criteria set out in the solicitation, including price criteria;
- B. The procurement process was conducted in a fair and transparent manner, in accordance with the process disclosed to all suppliers;
- C. The term of the contract does not exceed a maximum term of five (5) years, or the projected term of capital funding for a project as approved by Council; and
- D. The contract is within funding approval under the provisions of Chapter 71, Financial Control up to a maximum of \$500,000.

§ 195-8.2. Authority to award - Bid Award Panel.

The Bid Award Panel is authorized to make an award arising from the issuance of a solicitation provided that the following conditions are met, based on the report of the Chief Purchasing Official, in consultation with the division head who initiated the solicitation:

- A. The award is to the supplier whose response meets the specifications and qualification requirements set out in the solicitation and whose response represents the best value to the City based on the evaluation criteria set out in the solicitation, including price criteria;
- B. The solicitation was conducted in a fair and transparent manner, in accordance with the process disclosed to all suppliers;
- C. The term of the contract does not exceed a maximum term of five (5) years, or the projected term of capital funding for a project as approved by Council; and
- D. The contract is within funding approval under the provisions of Chapter 71, Financial Control up to a maximum of \$20,000,000.

§ 195-8.3. Extended authority of the Bid Award Panel.

- A. The Bid Award Panel is authorized to exercise the power of a Standing Committee to make an Award that exceeds \$20,000,000 in the following circumstances:

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- (1) A regularly scheduled meeting of the Standing Committee to which the bid, as the case may be, would be normally reported for award is cancelled for whatever reason, including labour disruption, and there is no meeting of Council scheduled either prior to or within the week following the cancelled Standing Committee meeting to which the bid could be reported; or
 - (2) During the period between the last scheduled meeting of Council and the first meeting of a new Council after an election; or
 - (3) During the period between when Council breaks for the summer recess and the first agenda closing deadline for the appropriate Standing Committee following the break; and
 - (4) All other pre-conditions to an award by the Bid Award Panel are met, including that the contract has funding approval under the provisions of Chapter 71, Financial Control.
- B. If the Bid Award Panel makes an award under this extended authority, the award shall be reported by the Chief Purchasing Official to the Government Management Committee for information.

§ 195-8.4. Standing Committee authority.

- A. Standing Committee is authorized to make an award arising from the issuance of a solicitation provided that the following conditions are met, based on the report of the Chief Purchasing Official, in consultation with the division head who initiated the solicitation:
- (1) The award is to the supplier whose response meets the specifications and qualification requirements set out in the solicitation and whose response represents the best value to the City based on the evaluation criteria set out in the solicitation;
 - (2) The solicitation was conducted in a fair and transparent manner, in accordance with the process disclosed to all suppliers;
 - (3) The term of the contract does not exceed a maximum term of five (5) years, or the projected term of capital funding for a project as approved by Council; and
 - (4) The contract is within funding approval under the provisions of Chapter 71, Financial Control, but exceeds \$20,000,000.
- B. Standing Committee shall be authorized to make an award arising from the issuance of a solicitation document that meets all the conditions in subsection A, regardless of the contract value, where the Chief Purchasing Official or the City official on whose behalf the solicitation was made are of the opinion that the award should be made by Standing Committee. Such awards shall be reported upon to the Standing Committee by the Chief Purchasing Official and the division head who initiated the solicitation and, where necessary, the City Solicitor.

§ 195-8.5. City Council authority.

Council is authorized to make an award or to take any other appropriate action including rescinding an award or cancelling a solicitation in the following situations:

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- A. The Chief Purchasing Official, after consulting with the division head who has initiated the solicitation document, has recommended an award to a supplier whose response may not materially meet the specifications and qualification requirements set out in the solicitation or whose response may not represent the best value to the City based on the evaluation criteria set out in the solicitation;
- B. The award exceeds the contract term limit of five (5) years, or exceeds the projected capital funding for a project previously approved by Council;
- C. The Chief Purchasing Official, after consulting with the City Solicitor, has determined that there are material risks as to the merits of making or rescinding any award;
- D. The contract does not have funding approval;
- E. The Chief Purchasing Official or the City official on whose behalf the solicitation was made are of the opinion that the award should be made by Council; or,
- F. Council has directed that the award be made by Council.

ARTICLE 9
Cancellation of Solicitations

§ 195-9.1. Cancellation of solicitations.

The Chief Purchasing Official shall be authorized to cancel any solicitation where:

- A. There is a request by the division head who initiated the solicitation where the cost of the responses exceed the funding approval for the proposed contract.
- B. In the opinion of the division head responsible for the solicitation:
 - (1) A change in the scope of work or other solicitation requirements are necessary and therefore a new solicitation should be issued; or
 - (2) The goods and services identified in the solicitation no longer meet the division's requirements.
- C. In the opinion of the Chief Purchasing Official the integrity of the solicitation process has been compromised due to a material breach of the process as disclosed in the solicitation.
- D. The solicitation has failed to elicit competition or any qualified supplier.
- E. Upon review by the Treasurer in consultation with the City Solicitor, it is determined that the integrity of the solicitation process has been compromised due to a material breach of the procurement process disclosed in the solicitation.

ARTICLE 10
Bid Disputes

§ 195-10.1. Pre-award bid disputes.

Suppliers should seek a resolution of any pre-award dispute by communicating directly with the Chief Purchasing Official as soon as possible from the time when the basis for the dispute became known to them. 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.

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§ 195-10.2. Post-award bid disputes.

Any dispute to an award decision must be received in writing by the Chief Purchasing Official no later than ten (10) days after the date of the award notification, or where a debriefing has been requested, no later than five (5) days after such debriefing is received. Any dispute that is not timely received or in writing will not receive further consideration.

Any written dispute with a procurement value over \$100,000 that cannot be resolved by the Chief Purchasing Official through consultations with the supplier, shall be referred by the Chief Purchasing Official to the Treasurer or their designate(s) for an impartial review, based on the following information:

- A. A specific description of each act or omission alleged to have materially breached the procurement process;
- B. A specific identification of the provision in the solicitation or procurement procedure that is alleged to have been breached;
- C. A precise statement of the relevant facts;
- D. An identification of the issues to be resolved;
- E. The supplier's arguments, including any relevant supporting documentation; and
- F. The supplier's requested remedial action.

The Treasurer or their designate(s), in consultation with the City Solicitor, may:

- G. Dismiss the dispute; or
- H. Accept the dispute and direct the Chief Purchasing Official to take appropriate remedial action, including, but not limited to, rescinding the award and any executed contract, and canceling the solicitation.

The Treasurer may adopt and publish such further procedures as are necessary to ensure an independent and timely review and resolution of post award bid disputes.

ARTICLE 11
Contract Execution

§ 195-11.1. Contract execution and purchase orders.

Where an award of a contract has been made, then in addition to any other general or specific authority delegated by Council regarding contract execution:

- A. Any contract in excess of \$100,000 shall be in a form satisfactory to the City Solicitor;
- B. The form of contract shall be disclosed in the solicitation, including any process and scope for contract negotiations. All awards are subject to the execution of the contract documents or issuance of a purchase order by the City;
- C. The City Clerk and Deputy City Manager and Chief Financial Officer may enter into and execute all necessary contract documents in relation to any award;
- D. The Clerk and division head with management authority for the award may enter into and execute the contract documents in relation to that division's award;

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- E. The division head with management authority for the award may alone, enter into and execute the contract documents in relation to that division's award of \$500,000 or less;
- F. The Chief Purchasing Official may issue a purchase order for any procurement award; and
- G. The division head, in consultation with the Chief Purchasing Official, may issue a Divisional Purchase Order for any procurement award of \$50,000 or less.

ARTICLE 12
Surplus Goods

§ 195-12.1. List of surplus goods.

Where a division head determines that any goods should be declared surplus due to being obsolete, worn out or no longer being useful for the division, a list of such goods shall be made available to the Chief Purchasing Official for the purpose of circulation to other divisions. If they are not required by any other divisions, then the goods may be declared surplus by the Chief Purchasing Official.

§ 195-12.2. Disposal of surplus goods.

Arrangements may be made for the disposal of the goods in any way that is believed will provide the highest return to the City, including, but not limited to:

- A. Public auction;
- B. Issuance of a request for tenders or request for quotations;
- C. Trade-in as part of the procurement of other similar goods being acquired by the City;
- D. 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
- E. Classifying as waste and recycling, scrapping, dismantling, destroying and/or disposing.

ARTICLE 13
Supplier Code of Conduct

§ 195-13.1. Honesty and good faith.

- A. Suppliers must respond to the City's solicitations in an honest, fair and comprehensive manner that accurately reflects their capacity to satisfy the requirements stipulated in the solicitation.
- B. Suppliers shall submit a bid only if they know they can satisfactorily perform all obligations of the contract in good faith.
- C. Suppliers shall alert the Chief Purchasing Official to any factual errors, omissions and ambiguities that they discover in the solicitation as early as possible in the process to avoid the solicitation being cancelled.

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§ 195-13.2. Confidentiality and disclosure.

- A. Suppliers must maintain confidentiality of any confidential City information disclosed to the supplier as part of the solicitation process.
- B. Suppliers must acknowledge in their bid that their bid information will be subject to the confidentiality and disclosure requirements of the Municipal Freedom of Information and Protection of Privacy Act, 1990.

§ 195-13.3. Conflicts of interest or unfair advantage.

Suppliers must declare and fully disclose any actual or potential conflict of interest or unfair advantage related to the preparation of their bid or where the supplier foresees an actual or potential conflict of interest in the performance of the contract. Such potential conflicts of interest or unfair advantages include, but are not limited to:

- A. Engaging current or former City employees or public office holders to take any part in the preparation of the bid or the performance of the contract if awarded, any time within two (2) years of such persons having left the employ or public office of the City;
- B. Engaging any family members, friends or private business associates of any public office holder which may have, or appear to have, any influence on the procurement process, or subsequent performance of the contract;
- C. Prior involvement by the supplier or affiliated persons in developing the technical specifications or other evaluation criteria for the solicitation;
- D. Prior access to confidential City information by the supplier, or affiliated persons, that is materially related to the solicitation and that was not readily accessible to other prospective suppliers; or
- E. The supplier or its affiliated persons are indebted to or engaged in ongoing or proposed litigation with the City in relation to a previous contract.

§ 195-13.4. Collusion or unethical bidding practices.

No supplier may discuss or communicate, directly or indirectly, with any other supplier or their affiliated persons about the preparation of the supplier's submission including, but not limited to, any connection, comparison of figures or arrangements with, or knowledge of any other supplier making a submission for the same work. Suppliers shall disclose to the Chief Purchasing Official any affiliations or other relationships with other suppliers that might be seen to compromise the principle of fair competition, including any proposed subcontracting relationships.

§ 195-13.5. Illegality.

- A. A supplier shall disclose any previous convictions of itself or its affiliated persons for collusion, bid-rigging, price-fixing, bribery, fraud or other similar behaviours or practices prohibited under the Criminal Code, the Competition Act or other applicable law, for which they have not received a pardon.
- B. A supplier shall be deemed ineligible for an award for a minimum period of five (5) years from the date of the conviction, unless pre-approved by the Treasurer.

§ 195-13.6. Interference prohibited.

No supplier may threaten, intimidate, harass, or otherwise interfere with any City employee or public office holder in relation to their procurement duties. No supplier may likewise threaten, intimidate, harass, or otherwise interfere with an attempt by any other prospective supplier to bid for a City contract or to perform any contract awarded by the City.

§ 195-13.7. Gifts or favours prohibited.

No supplier shall offer gifts, favours or inducements of any kind to City employees or public office holders, or otherwise attempt to influence or interfere with their duties in relation to the procurement process or management of a contract.

§ 195-13.8. Misrepresentations prohibited.

Suppliers are prohibited from misrepresenting their relevant experience and qualifications in relation to any solicitation process and must acknowledge that the City's process of evaluation may include information provided by the supplier's references as well as records of past performance on previous contracts with the City or other public bodies.

§ 195-13.9. Prohibited communication during the solicitation.

No supplier, or affiliated person, may discuss or communicate either verbally, or in writing, with any employee, public office holder, or the media in relation to any solicitation between the time of the issuance of the solicitation to the award and execution of final form of contract, unless such communication is expressly permitted in the solicitation and in compliance with Chapter 140, Lobbying. All supplier communications shall be with the Chief Purchasing Official or the employee specifically designated for that purpose in the solicitation.

§ 195-13.10. Failure to honour bid.

Suppliers shall honour their bid, except where they are permitted to withdraw their bid in accordance with the process disclosed in the solicitation. Suppliers shall not refuse to enter into a contract or refuse to fully perform the contract once their bid has been accepted by the City.

§ 195-13.11. Supplier performance.

- A. Suppliers shall fully perform their contracts with the City and follow any reasonable direction from the City to cure any default.
- B. Suppliers shall maintain a satisfactory performance rating on their previous contracts with the City and other public bodies to be qualified to be awarded similar contracts.

§ 195-13.12. Disqualification of suppliers for non-compliance.

- A. Suppliers shall be required to certify compliance with the Supplier Code of Conduct as set out in Article 13 of this chapter with their bid and verify compliance prior to award. Any contravention of the Supplier Code of Conduct by a supplier, including any failure to disclose potential conflicts of interest or unfair advantages, may be grounds for the Chief Purchasing Official to disqualify a supplier from being awarded a contract.
- B. 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.

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- C. A contravention of the Supplier Code of Conduct may also be grounds for the division head to terminate any contract awarded to that supplier and require the return of any advance payments.

§ 195-13.13. Suppliers in debt or in litigation with the City.

- A. The Treasurer, in their absolute discretion, may disqualify suppliers, or their affiliated persons, who are indebted to the City or engaged in ongoing litigation for damages related to a contract awarded by the City.
- B. In determining whether to disqualify a supplier or their affiliated persons under this Article, the Treasurer may consider the following non-exclusive factors, in consultation with the City Solicitor:
- (1) The supplier's history of making frivolous or vexatious claims, exaggerated damages claims, or other litigious conduct that has or may result in unnecessary additional administrative costs to the City or other public bodies;
 - (2) The outcome of any prior or interim litigation, including whether legal costs have been awarded against the supplier or the City;
 - (3) The prospect of setting off supplier debt against future contract payments;
 - (4) Where the supplier is the only qualified supplier or in cases of an emergency;
 - (5) The overall risk in relation to the total cost of the proposed contract;
 - (6) Subrogated insurance claims brought in the name of the supplier, but not initiated by the supplier; or,
 - (7) Claims by or against the City that in total value are less than \$100,000.
- C. This Article does 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 procurement.

§ 195-13.14. Suspension of suppliers from future solicitations.

- A. Without limiting or restricting any other right or privilege of the City, Council may suspend a supplier's eligibility to bid for a period between one (1) and five (5) years due to a contravention of the Supplier Code of Conduct.
- B. The Chief Purchasing Official, in consultation with the City Solicitor, may also temporarily suspend a supplier's eligibility to bid for up to six (6) months due to a contravention of the Supplier Code of Conduct.
- C. The Chief Purchasing Official shall submit an annual report to Government Management Committee, where any Supplier has been suspended under this Article.

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ARTICLE 14
General

§ 195-14.1. Employee Ethical Procurement Standards.

- A. City employees must perform their duties and arrange their private interests so that the public confidence in their integrity, objectivity and impartiality are conserved and enhanced in compliance with Chapter 192, Public Service.
- B. Any potential conflict of interest or unfair advantage related to a divisional procurement, where known, shall be disclosed to the Chief Purchasing Official as early as possible in the purchasing process by the division head.
- C. Any potential conflict of interest or unfair advantage shall be managed in a manner consistent with the highest standards of purchasing ethics, which is not limited to cancelling a solicitation or implementing reasonable safeguards to prevent an employee from having any access to confidential information or involvement in a particular procurement.

§ 195-14.2. In-house bids restricted.

Submissions to any solicitation will not be accepted from internal City employees or divisions, without prior approval by Council, including approval of the process for fairly evaluating those submissions.

§ 195-14.3. No informal authority to contract.

No City employee or public office holder shall make, or offer to make, any contract on behalf of the City except as may be provided for in this Chapter and in compliance with Chapter 71, Financial Control.

§ 195-14.4. No split contracts.

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 Chapter 71, Financial Control.

§ 195-14.5 No contracts without funding approval.

No contract shall be authorized unless Council has provided funding approval for such purpose in a budget, or agreed to the provision of such funds, and no expenditure shall be authorized or incurred in excess of the funds provided, subject to the provisions of Chapter 71, Financial Control.

§ 195-14.6. Conflict with policies and procedures.

If there is a conflict or inconsistency between this Chapter and any of the procurement policies and procedures, this Chapter shall govern and take precedence.