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**Policy Title: Bid Awards and Bid Protests**

**Policy Number: 03-06-08**

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**Section: Corporate Administration**

**Subsection: Acquisition/Disposal of Goods and Services**

**Effective Date: January 1, 2017**

**Last Review Date: January, 2020**

**Approved by:**

**Owner Division/Contact:**

**Council**

**Procurement Services, Corporate Business Services Division, Corporate Services Department**

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## Policy Statement

Bidders may receive Awards for the supply of Goods or Services only in accordance with this policy and the Procurement By-Law 0013-2022, as amended. Bidders who respond to a Bid Request have the right to register a Formal Bid Protest if they feel that the City's actions in conducting purchasing activities such as evaluating Bids or recommending the Award of a Contract have been unfair or inappropriate.

## Purpose

This policy outlines the following processes:

- Bid selection and Award
- Notification to Bidders, including the Bid protest procedure
- How to register a Formal Bid Protest

## Scope

This policy applies to all Medium Value and High Value Acquisitions undertaken and approved in accordance with the Procurement By-Law 0013-2022.

This policy applies to original Awards only and does not cover Contract amendments, extensions, renewals, etc.

This policy does not include Bid openings. For information on Bid openings refer to Corporate Policy and Procedure – Acquisition/Disposal of Goods and Services – Bid Openings and Bid Irregularities – Publicly Advertised High Value Acquisitions.

## Legislative Authority

This policy is written in compliance with the *Municipal Act, 2001* and the Procurement By-Law 0013-2022. Disclosure of information is subject to the *Municipal Freedom and Protection of Privacy Act* (MFIPPA). For additional information on MFIPPA refer to Corporate Policy and Procedure - Corporate Administration – Freedom of Information and Protection of Privacy.

## Definitions

For the purposes of this policy:

“Award” means the selection by the City of the Bidder and the Bidder’s Goods and/or Services as a result of a Bid Request.

“Bid” means an offer or submission from a Bidder, received in response to a Bid Request from the City.

“Bid Request” means a formal solicitation (“request”) from the City that is issued to external suppliers, inviting them to submit expressions of interest, proposals, quotations, tenders, etc.

“Bidder” means any legal entity submitting a Bid.

“Buyer” means a Buyer in the City’s Procurement Services Section, Corporate Business Services Division who is assigned responsibility for a particular acquisition.

“Chief Procurement Officer” means the City’s Director of Corporate Business Services, Corporate Services Department, or their designate, in writing.

“Contract” means a commitment to acquire or potentially acquire, Goods or Services or both.

“Contract Manager” means a City employee who has been authorized and assigned the responsibility of overseeing a particular Bid or Contract.

“Formal Bid Protest” means a request registered by a Bidder with the Office of the City Clerk to make a deputation before an appropriate committee of Council.

“Goods” means goods of all kinds, including both tangible and intangible goods, including but not limited to supplies, materials, equipment and licences.

“High Value Acquisition” or “HVA” means an acquisition of Goods or Services or both, having a value of more than \$100,000, exclusive of taxes.

“Manager” means the Manager, Procurement Services, Corporate Business Services Division, Corporate Services Department or their designate in writing.

“Medium Value Acquisition” or “MVA” means an acquisition of Goods or Services or both, having a value of more than \$25,000 and up to \$100,000, exclusive of taxes.

“Notice of Award Recommendation” or “Notice” means the written notification from the Buyer to all HVA Bidders, prior to the Award of a Contract, which outlines the results of the Bid evaluation.

“Procurement Authorization Request Form” (PAR Form) means an electronic form that is contained within the Procurement Centre. The purpose of the PAR Form is to obtain authority to award, change or terminate a contract, establish a short-list of bidders or cancel a Bid Request. The PAR Form provides a summary of the relevant departmental and purchasing information; specifies the details of the authorization request; and confirms the outcome of the procurement process/step.

“Procurement By-Law” or “By-Law” means the City’s By-Law 0013-2022, as amended, which pertains to the acquisition of Goods and Services and the disposition of surplus Goods.

“Services” means services of all kinds, including labour, construction, maintenance and professional and consulting services.

“Vendor” means a legal entity, including an individual, with whom the City has entered into a Contract to acquire Goods or Services or both.

## **Accountability**

### **Departmental Directors**

All departmental directors are accountable for:

- Ensuring all applicable managers/supervisors are aware of this policy and of any subsequent revisions, and
- Ensuring compliance with this policy

### **Managers/Supervisors**

Managers/supervisors with staff who are responsible for Bid Requests and/or Awards are accountable for:

- Ensuring staff in their respective work units are aware of this policy and any subsequent revisions
- Ensuring applicable staff are trained on this policy, as well as any subsequent revisions, with respect to their specific job function, and
- Ensuring staff comply with this policy

## **Background**

In accordance with the *Municipal Act, 2001*, Council has authorized the Chief Procurement Officer to either directly, or through permitted delegation to Procurement Services staff, conduct purchasing activities and award Contracts where the procurement processes have been conducted in accordance with the By-Law.

Prior to requesting Bids, documents setting out the details for the Goods or Services required, the strategy for Award and the terms and conditions under which the City would consider entering into a Contract are prepared, if necessary. A procurement process is then conducted and Bids are evaluated in accordance with the information outlined in the Bid Request.

All Awards for Goods or Services must be authorized on a PAR Form in accordance with the By-Law before a Contract may be issued. In certain cases identified in the By-Law, approval must also be obtained from Council. Awards may not be made based on unsolicited proposals.

## **Roles and Responsibilities**

Departmental staff determine the Award, including which Vendor(s) should be selected and which Vendor offer for the required Goods or Services should be chosen.

### **Acquiring Directors**

Acquiring directors are responsible for delegating responsibility for conducting procurement processes, recommending Awards and authorizing PAR Forms in accordance with Schedule "B" of the By-Law.

### **Manager, Procurement Services**

The Manager, Procurement Services is responsible for:

- Providing guidelines, advice and support to City staff as appropriate
- Providing guidance, training and support to Procurement Services staff
- Authorizing PAR Forms in accordance with the By-Law
- Reviewing Award reports to Council and forwarding them to the Chief Procurement Officer for approval, and
- Managing Formal Bid Protests

### **Contract Managers**

Contract Managers are responsible for:

- Conducting, analysing and evaluating MVA Bids and determining the acceptability, final scope and value of the Award, in accordance with the Bid Request
- Conducting reference checks of Bidders if appropriate
- Recommending Awards, including selection of the Bidder, the Goods or Services and acceptable terms and conditions
- Preparing MVA PAR Forms and forwarding to Procurement Services, together with all Bids and supporting documentation, such as related drawings, plans, schedules, specifications, etc., which may be incorporated into the Contract, and
- Maintaining copies of all correspondence with Bidders, Award recommendations (including the supporting documentation), PAR Forms and Council reports

## **Procurement Services Purchasing Staff**

Procurement Services purchasing staff are responsible for:

- Providing guidance and support (including templates and procedures) to Contract Managers to facilitate reference checking
- Reviewing departmental Award recommendations and supporting documentation and ensuring compliance with the By-Law
- Issuing Notices to HVA Bidders
- Advising Bidders of the Bid dispute process when appropriate
- Advising the Contract Manager of any Bid disputes and the status of any Formal Bid Protests
- Preparing PAR Forms for HVA Bid Requests and obtaining the appropriate approvals, as outlined in Schedule B of the By-law
- Maintaining supporting documentation forwarded from Contract Managers, original PAR Forms and Contracts, process information such as Bidder registrations, advertisements, management directives, etc., evaluation results, purchasing staff correspondence with Bidders, Formal Bid Protest documentation and Council reports, and
- Advising Legal Services if a Bidder initiates or threatens legal action against the City at any time

## **Legal Services**

Legal Services are responsible for:

- Assessing legal risk and providing legal advice and support to Contract Managers and/or Procurement Services staff on Bidder selection, Bid rejection and negotiations, in writing if requested
- Interpreting the legal terms and conditions of Contract documents
- Reviewing reports to Council, on request
- Notifying the Manager of any Bidder who has brought a lawsuit against the City
- Drafting and/or reviewing Contract documents in accordance with Schedule C of the By-Law, and
- Drafting and/or reviewing the legal terms and conditions of Contract documents for any acquisition upon the request of the Contract Manager or Procurement Services

## **MVA Process**

Departmental Contract Managers conduct MVA procurements and evaluate MVA Bids to ensure they are acceptable and meet the requirements of the Bid Request. Reference checks may be conducted by the Contract Manager, if needed.

The Contract Manager should attempt to resolve any concerns which may be raised by non-successful Bidders. If Bidders are not satisfied, the matter may be referred to the Buyer, who will determine a course of action on a case by case basis.

The Contract Manager prepares a PAR Form and reviews the Award Recommendation with the Buyer prior to obtaining departmental authorizations as required in Schedule B of the By-Law.

The recommendation (PAR Form) is then sent to the Buyer, who reviews the process and documentation and obtains purchasing staff approval of the Award in accordance with the By-law.

## **HVA Process**

Buyers conduct all HVA processes on behalf of City departments.

### **Bid Irregularities**

At the close of a HVA Bid Request, the Buyer conducts a review of the Bids for irregularities and notifies the Manager if any potential major irregularities are identified. Irregularities may also be identified during the more in-depth evaluation completed in consultation with the Contract Manager. If a potential major irregularity is identified and confirmed, the Manager notifies the Bidder as soon as possible. Refer to Corporate Policy and Procedure - Acquisition/Disposal of Goods and Services – Bid Openings and Bid Irregularities for more information.

### **Evaluation Process**

Bids with no major irregularities are evaluated in depth by comparing each Bid to the requirements in the Bid Request. In determining which Bid or Bids will result in an Award, consideration will first be given to compliant Bids based on the criteria for Award specified in the Bid Request. If no criteria are identified (e.g. when tenders have been called), then consideration will be given based on the lowest priced submission (not including prices for optional items).

Reference checks of Bidders may be conducted, with the guidance and support of the Buyer. The City may reject Bids received from Bidders for whom unacceptable references have been obtained. In this event, the Manager should provide the Bidder an opportunity for rebuttal before taking action to reject the Bid. The City shall have the right to determine the Award and may rely on information from any source in making its decision.

The PAR Form and supporting documents, as approved by departmental management in accordance with Schedule B of the By-Law, are submitted to Procurement Services purchasing staff for final review and authorization.

If it is found that the process was not fair and objective, the Manager may request further actions to be taken including a re-evaluation of the Bids.

Bid Requests may be cancelled in accordance with the By-Law.

### **Notice to HVA Bidders**

Prior to processing the PAR Form for approvals, the Buyer must send a Notice to all Bidders advising them of the results.

Bidders are advised that requests for debriefings or objections to the recommendations must be made to the Manager, in writing, by the deadline stipulated in the Notice, usually three days. Otherwise, the Award recommendation will proceed to approval.

### **Responding to Bidder Objections**

The Buyer must provide an initial response to Bidder questions or objections to the City's decision within 48 hours, when possible. If the Bidder requires further information, the Buyer will notify the Bidder to forward specific issues and requests, in writing, to the Manager.

The Manager will provide a response, when possible, within 10 working days of receipt of the written Bidder request for information. Or, at the Bidders request, the Manager will arrange a meeting to discuss the Bidder's concerns, in which case, the Manager may respond, in writing, following the meeting.

Prior to the meeting the Buyer and/or the Manager will review the evaluation information with the Contract Manager to clarify the details, confirm the reasons for non-selection of the Bid and discuss what information may be made available to the requesting Bidder.

If the Bidder is not satisfied with the information provided, the Manager must notify the Bidder that a Formal Bid Protest may be made. In this event, the Bidder must notify the Manager of the intent to register a Formal Bid Protest within five (5) working days of receiving the Manager's notification.

### **Registering a Formal Bid Protest**

Upon receipt of a notice of intent to register a Formal Bid Protest, the Manager must advise the Bidder that the Bidder is responsible for contacting the Office of the City Clerk within five (5) business days to register a Formal Bid Protest and that only those issues which have been raised and which staff have had an opportunity to investigate and formally respond to, may be addressed in the Formal Bid Protest. The Manager must then advise Legal Services and the Office of the City Clerk of the Bidder's intent to file a Formal Bid Protest.

Formal Bid Protests must be heard by General Committee and may be heard by Council, prior to the Bid Award. The Office of the City Clerk will confirm a date for the Bidder to appear before General Committee and advise the Bidder and the Manager, in writing, of the committee meeting date. The Manager may prepare a report summarizing staff's position. General Committee makes a decision by way of a recommendation that will go to Council for final adoption.

Any action taken by General Committee or Council as a result of a Formal Bid Protest will be determined according to the merits of each individual case.

**Notice of Award**

Once all Formal Bid Protests have been addressed or the five (5) day deadline for filing has passed; Council approval obtained where required; and the PAR Form approved, the successful Bidder will be notified of the Award decision.

**Contract Negotiations**

Negotiations, if any, should be completed and all Contract terms and conditions prepared prior to authorizing the PAR Form. In extenuating circumstances, as determined by the Chief Procurement Officer, a PAR Form may be authorized prior to the completion of the negotiations and finalization of the Contract terms and conditions. However, in this event, the decision must be supported with documentation outlining the situation, the reason further negotiations are required and the plan for implementing the Contract.

No Goods or Services shall be ordered, requested, delivered or performed until after a Contract is executed.

**PAR Form Source and Content**

Procurement Services provides PAR Form templates on its website. The PAR Form confirms the results and outcomes of the procurement process. Recommendations for Contract Award reflect the City's maximum potential spend, based on the amounts and/or quantities set out in the Bid Request, including any option for renewal of the Contract.

Information must be provided on the PAR Form to fully explain:

- The need for the Goods and/or Services
- The current supply situation, if relevant
- The procurement process conducted
- The evaluation results
- The approach being taken for supply in the future, such as scope, duration, type of commitment (e.g. one-time purchase; blanket purchase; annual versus multi-year plan; life-cycle; etc.)
- The applicable by-law provision (reference)
- The name of the City project or program affected
- The approved funding amounts and source (accounts)
- The scope of the award in terms of time and potential financial commitment level, and
- If Council approval is required

Bid amounts must be identified and, if different from the recommended Contract Award value, explained in detail. Briefing notes, spreadsheets or other documents which are necessary to outline or clarify the information must accompany the PAR Form.



### Reporting to Council

PAR Forms and all Contract negotiations should be prepared prior to completion of all reports to Council to ensure that information about the procurement process, Bid results and the Vendor offer is accurate and complete. Council reports recommending Awards on behalf of specific departments are prepared by departmental staff. Council reports recommending Awards for City-wide Contracts are prepared by Procurement Services purchasing staff.

Council reports should be reviewed by applicable staff in other departments involved, such as Corporate Services Information Technology (IT) for procurements involving IT systems, before being finalized by the acquiring department or Procurement Services purchasing staff, as applicable. Staff preparing the report should include the PAR Form, Statement of Work or other supporting documents as an appendix, if necessary to clarify the information and provide details of the Award. All Council reports recommending Awards must be approved by the Chief Procurement Officer

All Contracts having a term in excess of ten years require the approval of Council.

### Execution of the Contract

Once the PAR Form has been authorized and Council approval obtained, if applicable, successful Bidders must submit documentation as specified in the Bid Request such as proof of insurance.

Contracts must include clear terms and conditions, complete financial information, such as pricing and payment structures, detailed requirements and, if applicable, may include drawings, sureties, etc. Contracts are reviewed by Legal Services in accordance with Schedule "C" of the Procurement By-Law or upon the request of the Contract Manager or Procurement Services. Once the Contract has been executed by the Vendor and designated City staff, as stipulated in the By-Law, it is entered into the City's electronic financial system and a specific document control number is assigned.

### Record Keeping

All documentation related to an Award, such as PAR Forms and all attachments, Council reports and Contracts, represents official corporate records and must be kept in accordance with the Records Retention By-Law 0097-2017, as amended. Where Procurement Services' retention periods are more stringent than those in the Records Retention By-Law and depending on the nature of the acquisition, documentation must be kept in accordance with Procurement Services procedures. Procurement Services is responsible for the safekeeping of all Award reports.

### Revision History

Reference	Description
GC-0459-2011 – 2011 07 06	

March 22, 2012	Housekeeping change to name of Bid Opening policy
December, 2015	Scheduled review. No changes required.
December 22, 2016	Administrative update to replace BAR Form with PAR Form to align with the new Procurement Centre process
January, 2020	Scheduled review. No changes required.
March 14, 2022	Housekeeping to reflect Procurement by-law and reorg, other minor admin revisions.