

Policy Title: Bid Review and Evaluation – High Value Acquisitions

Policy Number: 03-06-02

Section: Corporate Administration

Subsection: Acquisition/Disposal of Goods and Services

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Last Review Date: April, 2023

Approved by:

Owner Division/Contact:

Council

Procurement Services, Corporate Business Services Division, Corporate Services Department

Policy Statement

High Value Acquisition (HVA) procurement processes must be conducted fairly and consistently to ensure the equitable treatment of all Bidders.

Purpose

This policy details the responsibilities and procedures for reviewing and evaluating HVA Bids and provides specific guidance to staff on:

- Identifying and appropriately addressing Bid Irregularities
- Identifying and appropriately addressing Unethical Bidding Practices
- Evaluating Bids
- Performing appropriate due diligence, and
- Notifying disqualified and unsuccessful Bidders

Scope

This policy applies to:

- All submissions received from Bidders in response to Publicly Advertised Bid Requests, including Requests for Tender (RFT), Requests for Proposal (RFP), Requests for Prequalification (RFPQ) and Requests for Expression of Interest (RFEI), and
- All individuals responsible for Bid Review and Evaluation, including staff and external consultants retained by the City to act on its behalf

Medium Value Acquisitions (MVAs), which require less formality and which are not publicly posted, must also be conducted fairly and consistently to ensure the equitable treatment of all Bidders. Accordingly, MVAs that require Evaluation should also follow this policy.

Exclusion

This policy does not apply to the acquisition of real property or to leases and limited interest agreements allowing for the use of City real property.

Legislative Authority

This policy complies with the Procurement By-law 0013-2022, as amended, which governs the procurement of Goods and Services.

Disclosure of procurement-related information is subject to the *Municipal Freedom of Information 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 resulting from a Bid Request.

“Best Value” means the optimal balance of efficiency, performance and cost determined in accordance with the evaluation criteria disclosed in a Bid Request for an RFP procurement process. Best Value is represented by the Bid with the highest score.

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

“Bid Request” means a solicitation from the City to potential Bidders to submit a Bid.

“Bidder” means any legal entity submitting a Bid.

“Buyer” means an employee in the Procurement Services Section, Corporate Business Services Division, assigned responsibility for a particular procurement process.

“Chief Procurement Officer” means the Director of Corporate Business Services or, in their absence, the Commissioner of Corporate Services or their designate.

“Contract Manager” means a City employee to whom a divisional director has delegated procurement process responsibility and/or contract management responsibility.

“Evaluation” means the action of scoring Bids received in response to RFP and RFPQ processes against predetermined weighted criteria or pass/fail criteria, as applicable.

“Evaluator Declaration Form” means a form that must be acknowledged by every member of an evaluation team, prior to starting Evaluation of Bids. The form includes instructions to evaluators and rules regarding conflict of interest and confidentiality.

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

“High Value Acquisition” or “HVA” means a procurement of Goods and/or Services having a value of more than \$100,000, excluding taxes.

“Irregularity” means a deviation between the requirements (terms, conditions, specifications, special instructions) of an HVA Bid Request and the information provided in a Bid response. Irregularities are classified as “Major Irregularities” or “Minor Irregularities”.

“Major Irregularity” means a deviation from an HVA Bid Request that, as determined by the Manager, is substantial and material to the Award and which, if permitted, could give the Bidder an unfair advantage over other Bidders.

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

“Materially Unbalanced” refers to pricing that may indicate manipulation by Bidders, within their Bid, that is to their advantage. Unbalanced pricing may occur in any bid, but is more likely in unit price Bids, Bids with phased pricing, and Bids from incumbent suppliers.

“Medium Value Acquisition” or “MVA” means a procurement of Goods and/or Services having a value of more than \$25,000 and not more than \$100,000, excluding taxes

“Minor Irregularity” means a deviation from an HVA Bid Request which, as determined by the Manager, affects form rather than substance, with no material impact to the Award and which, if permitted, would not give the Bidder an unfair advantage over other Bidders.

“Procurement By-law” means the City’s Procurement By-law 0013-2022, as amended.

“Publicly Advertised Bid Request” means the advertising of Bid Requests by the City, on the Internet.

“Request for Expression of Interest” or “RFEI” means a request used to determine market interest to provide Goods and/or Services that the City is contemplating purchasing and may result in the determination of a short list of Bidders to respond to a Bid Request.

“Request for Pre-Qualification” or “RFPQ” means a request with specific qualification criteria used to identify and pre-select qualified Bidders and/or Goods for participation in multiple step HVA procurement processes.

“Request for Proposal” or “RFP” means a request used to obtain a Bid or Bids for Goods and/or Services in cases where the City states the performance requirements and/or business objectives but Bidders recommend the optimal approach for consideration and evaluation by the City. Awards resulting from RFP processes are to the highest scoring Bidder(s).

“Request for Tender” or “RFT” means a request used for High Value Acquisitions to obtain irrevocable Bids in cases where the City has specified the quantity and quality of the Goods and/or Services. Awards resulting from RFT processes are to the lowest priced, compliant Bidder(s).

“Review” means the action of verifying Bids for correctness and matters of form, and in the case of RFT processes, substantial compliance with specifications and requirements.

“Services” means services of all kinds, including but not limited to labour, construction, maintenance and professional and consulting services.

“Unethical Bidding Practices” include, but are not limited to, acts of fraud, bribery, collusion and bid rigging among Bidders.

“Website” means the website “bids&tenders”, which is used by the City to post Bid Requests and for electronic receipt of HVA Bid responses. The Website contains public information regarding HVA Bids.

Roles and Responsibilities

Manager, Procurement Services

The Manager, Procurement Services is responsible for:

- Ensuring Buyers are aware of and compliant with this policy, relevant policies, procedures and the Procurement By-law
- Providing training, guidance, advice and support to staff and Buyers as appropriate
- Developing and maintaining forms and tools for Bid Review and Evaluation, and
- Carrying out actions where and as described in this policy

Buyer

The Buyer is responsible for:

- Overseeing the Evaluation process and the Evaluation team
- Ensuring fairness in the process and compliance with this policy, relevant procedures and the Procurement By-law
- Reporting real or perceived conflicts of interest, identified or suspected Unethical Bidding Practices, and Irregularities to the Manager
- Facilitating the Evaluation team to achieve consensus scores
 - The Buyer is not a scoring/voting member of the Evaluation team
 - For City-wide contracts for which the Buyer is the Contract Manager, another Buyer must facilitate the Evaluation process
- Arranging Bidder interviews, demonstrations and obtaining clarifications as necessary/appropriate
- All communications with Bidders that pertain to the procurement in process (the Buyer is the single point of contact throughout the procurement process), and

- Retaining all records related to the Evaluation process in the Procurement Centre (e.g. notes, decision records, letters and emails to and from Bidders, forms, matrices etc.)

Contract Manager

The Contract Manager is responsible for:

- Successfully completing training prepared by Procurement Services and available through Insight Learning, including training regarding potentially Unethical Bidding Practices
- Reporting real or perceived conflicts of interest, identified or suspected Unethical Bidding Practices, and Irregularities to the Buyer for escalation to the Manager
- Determining the required expertise and establishing the Evaluation team
- Participating in the Evaluation process as an Evaluation team member
- Ensuring that the business objectives for the procurement are met, and
- Maintaining notes, minutes and records of decisions and providing them to the Buyer for retention in the Procurement Centre

Evaluation Team

Members of the Evaluation team are responsible for:

- Agreeing to an Evaluator Declaration Form (in bids&tenders for HVA, or available electronically through Procurement Services for MVA) acknowledging their role and responsibilities in the Evaluation process
- Declaring bias or any real or perceived conflicts of interest to the Buyer
- Independently scoring Bids using the criteria and process for Evaluation described in the Bid Request and using the evaluation forms made available electronically by the Buyer, and
- Evaluating Bids in a manner that is fair, factual and defensible

Note: Delegation of an Evaluation is not permitted. Evaluation teams must include members with relevant expertise. The number of Evaluation team members should reflect the complexity and value of the procurement (a minimum of two members is required).

Fairness and Transparency

Each HVA Bid Request issued by the City must describe the process the City will follow to determine the Bidder(s) to whom a contract will be awarded. The City is required to conduct fair, open and transparent procurement processes and to disqualify non-compliant Bids.

Unethical Bidding Practices

All staff involved in the Bid Review and Bid Evaluation processes must be aware of potentially Unethical Bidding Practices that may be employed by Bidders. Any identified or suspected instances of Unethical Bidding Practices must be reported to the Manager.

Preliminary Review of HVA RFT, RFP, RFEI and RFPQ Bid Responses Review for Irregularities

The Buyer conducts a preliminary Review of all Bids received in response to HVA RFT, RFP, RFEI and RFPQ Bid Requests to determine if any Irregularities exist. Where Irregularities are identified, the Buyer must immediately inform the Manager, who will determine if the Bid(s) containing Irregularities are acceptable to the City.

Major Irregularities

Failure to meet any of the following requirements constitutes a Major Irregularity:

1. The Bid must be received through the Website
2. A Bid bond must be submitted with the Bid when the Bid Request (or addenda) stated that a Bid bond is required
3. The amount of the Bid bond must be equal to or greater than the amount indicated in the Bid Request
4. The bonding company that issued the Bid bond, and the “Agreement to Bond” if requested, must be licensed to conduct business in Canada and in the province of Ontario
5. Bidder declarations and statements in the Bidder Declaration form must be true and correct
6. Prices must be complete and specified in accordance with the Bid Request
7. Bids must conform to the essential requirements stated in the specifications or statement of work in a Bid Request. Essential requirements are those that are necessary to perform the intended operation and/or achieve the objectives of the procurement
8. Bids must conform to any item denoted as “mandatory” in the Bid Request (subject to the process for Minor Irregularities where the item is deemed to be a Minor Irregularity)
9. Failure to rectify Minor Irregularities if requested to do so, and/or
10. Other Bid issues fitting the definition of Major Irregularity, as determined by the Manager, in consultation with the procuring division and Legal Services

Bids containing a Major Irregularity are automatically disqualified. Where a Bid containing a Major Irregularity is identified, the Manager will:

- Disqualify the Bid without further consideration, regardless of Bid price, and
- Notify the Bidder of the disqualified Bid prior to the Bid Award

Minor Irregularities

Failure to meet any of the following requirements constitutes a Minor Irregularity:

1. An Agreement to Bond must be submitted with the Bid, if specified
2. The Bid Bond and Agreement to Bond, if specified, must be properly authorized by both the Bidder and the bonding company
3. Technical specifications documents must be completed and submitted with the Bid when specified in the Bid Request
4. “Proof” documents such as certificates and licences must be submitted with the Bid when specified in the Bid Request

5. Other Bid issues fitting the definition of Minor Irregularity, as determined by the Manager, in consultation with the procuring division

Where a Bid containing a Minor Irregularity is identified, the Manager, in consultation with the procuring division and depending on the nature of the Minor Irregularity, will either accept the Irregularity or require the Bidder to correct the Irregularity within a specified time. If the Bidder does not correct a Minor Irregularity to the satisfaction of the Manager within the established timeframe, the Irregularity will be deemed to be a Major Irregularity and the Bid will be disqualified.

Review for Indicators of Unethical Bidding Practices

The Buyer conducts a Review of Bids that have not been disqualified for Irregularities for indicators of potentially Unethical Bidding Practices, which may include but are not limited to:

- Bidders having the same or similar addresses
- Family relationships between Bidders and/or their representatives
- Bidders having the same IP addresses when submitting Bids and other documents, and/or
- Subcontractors carried by the Bidder (which can indicate overlap in several Bids)

Buyers must discuss any indicators of potentially Unethical Bidding Practices with the Manager. Additional background checks and/or consultation with Legal Services and/or Internal Audit may be required to determine if the Bid is acceptable and/or to determine further actions.

Mathematical Review

To identify errors in mathematical calculations and significant price variations, and ultimately to rank Bids, the Buyer conducts a mathematical review of all Bids:

- That contain no Irregularities
- That contain Minor Irregularities that the Manager has accepted, or
- That contain Minor Irregularities that have been corrected to the satisfaction of the Manager

The Buyer is permitted to correct errors that can be corrected using information that is evident on the face of the Bid. The Manager is permitted to use discretion in correcting package quantity and unit of measure discrepancies, decimal place errors and errors where the extension and totals do not match.

Where errors have been identified and corrected, the Buyer ranks Bids based on corrected Bid amounts and must notify a low Bidder of corrections that change the ranking of their Bid.

For the purposes of Bid review and/or Evaluation, if any Bids are submitted in a foreign currency, the Bids will be converted by the Buyer to Canadian currency at the rate of exchange posted by the Bank of Canada on the day of Bid closing.

Secondary Review of HVA RFT Bid Responses

Contracts are awarded based on the lowest acceptable Bid(s). In order to determine the lowest acceptable Bid(s), the Contract Manager reviews all Bids deemed acceptable in the preliminary review to:

- Confirm compliance with specifications and requirements
- Identify pricing anomalies and unbalanced pricing, and
- Validate relevance of Bidder's experience and other projects

Review for Compliance with Specifications and Requirements

The Contract Manager reviews all Bids received in response to an HVA RFT that were deemed acceptable in the preliminary review to ensure each Bid is substantially compliant with the specifications and requirements as stated in the Bid Request. If an external consultant will be conducting the Review for compliance, the Contract Manager is responsible for ensuring that the consultant's Review is completed in accordance with this policy.

Bid Pricing Review

The Contract Manager is responsible for ensuring that each Bid is priced properly and does not contain indicators of Materially Unbalanced pricing. Indicators of Materially Unbalanced pricing include, but are not limited to:

- The Bid is based on prices that are significantly lower and/or significantly higher in relation to prices for other items or work
- The Bid includes disproportionately high prices for additional quantities of specified items, if quantities are estimated (which could result in an overly high priced final contract, if permitted), and
- The Bid is based on a project payment schedule requiring payments that are high in relation to the actual work to be completed or deliverables to be received, especially in the early stages of a project, leaving little incentive for completion of later stages of work

A Bid that is priced low, compared to other Bids and/or estimates, is not necessarily unbalanced. However, this may indicate errors and/or misunderstanding by the Bidder or non-compliance with the specifications.

The Contract Manager must raise issues of non-compliance and Bid pricing concerns with the Buyer for discussion with the Manager. The Manager will determine the appropriate course of action, which may include clarification with the Bidder and/or disqualification of the Bid. The Manager may consult with Legal Services and/or the Chief Procurement Officer as required/appropriate.

Evaluation of RFP Bid Responses

Contracts are awarded based on the Best Value Bid(s). In order to determine the Best Value Bid(s), all Bids deemed acceptable in the preliminary review are evaluated by an Evaluation team and scored in accordance with predetermined criteria and weights, if applicable.

Evaluation Team

Depending on the nature and complexity of the RFP, Evaluation may require a cross-functional evaluation team and may involve:

- Clarifications
- Interviews
- Demonstrations of proposed systems, services or products, and/or
- Other additional steps as appropriate

The Buyer manages all Bidder communications. No communications are permitted between Bidders and members of the Evaluation team regarding the procurement in process.

The Evaluation process is confidential; no Bid or Bidder information shall be disclosed or discussed outside of the Evaluation team.

Objectives

The objectives of an RFP Evaluation include:

- Maintaining transparency and the integrity of the process, ensuring that the process is conducted as described in the Bid Request, with no undisclosed criteria
- Treating Bidders objectively and without bias, to ensure fairness
- Ensuring that informed decisions are made through appropriate clarifications and avoiding assumptions
- Reaching consensus among the Evaluation team so that the team agrees with the Evaluation outcome and supports the Award recommendation or selection of prequalified Bidders for RFEI and RFPQ evaluations and
- The Award recommendation aligns with the Bid Request, is defensible, and decisions are documented and supported by notes indicating the rationale for scoring (this information is also used to provide feedback to unsuccessful Bidders and to respond to their concerns, as required)

Evaluation of RFEI and RFPQ Responses

All submissions deemed acceptable in the preliminary review are evaluated by an Evaluation team and scored in accordance with pre-set criteria and weights, if applicable, to identify and pre-select qualified Bidders and/or Goods for participation in multiple step HVA procurement processes. The processes described for Evaluation of RFP Bid Responses, above, under the headings of Evaluation Team and Objectives apply to the Evaluation of RFPQ processes and

only apply to RFEI processes if the RFEI intends to pre-select Bidders to participate in multiple step HVA Procurement processes.

As RFEI and RFPQ processes do not involve pricing, price is not a factor in the Evaluation.

Diligence

The Buyer is responsible to perform due diligence to determine the acceptability of Bidders under consideration for Award or pre-selection if:

- The Bidder is unknown to the City
- The Bidder is a past employee or Member of Council
- The Bidder is known to the City but performance has been weak, inconsistent and/or there are indicators of instability
- Deemed prudent by the Manager, in collaboration with the Buyer and Contract Manager, or
- Performance verification of Goods/systems/etc. proposed in response to RFPQ processes is required

Where required/appropriate, the Buyer's due diligence may include:

- Conducting reference checks, both internal and external:
 - All references require completion of a form, which is provided by Procurement Services; reference forms can be completed by email and returned to the City or the Buyer may complete a reference form by telephone (if completed by telephone, the Contract Manager may participate in the call)
 - The Buyer must check in SAP to determine if the Bidder has held previous City contracts; if the Bidder has held previous contracts the Buyer may review past performance evaluation forms, if applicable, and obtain an internal reference from the applicable Contract Manager, and
 - Only the Contract Manager for a past contract can provide an internal reference and only documented performance concerns will be considered in deciding the acceptability of a Bidder
- Obtaining articles of incorporation, and
- Obtaining a credit check and/or other financial, legal or background information as applicable

Notification to Bidders

Notification to Bidders with Bid Irregularities

The Manager must notify any Bidder whose Bid is found to contain one or more Irregularities. The notification will include the following:

- Procurement number and name
- The Irregularity that was identified
- Reference to the Bid Request
- The reason for the disqualification (and where applicable, further explanation), and

- A minimum of three business days to raise any questions or concerns

Notification of Procurement Results

The Buyer must notify all Bidders (except those whose Bids were disqualified) of the procurement results at the conclusion of the Bid Review and Evaluation process after determining:

- The lowest acceptable Bidder(s) pursuant to RFT processes
- The highest ranked Bidders(s) pursuant to RFP processes, or
- Pre-selected Bidders and/or Goods pursuant to RFEI and RFPQ processes

The notification will include the following:

- Procurement number and name
- The successful Bidder(s) and total Award amount(s), if applicable, and
- A minimum of three business days to raise any questions or concerns

Debriefings following RFP, RFEI and RFPQ processes are available to Bidders, as noted in the Bid Request.

Bidders may object if they feel that the City's actions in reviewing or evaluating Bids or recommending the Award of a contract or the selection of prequalified Bidders and/or Goods have been unfair or inappropriate. Refer to Corporate Policy and Procedure - 03-06-08 - Bid Awards and Bid Protests.

Procurement Authorization Request (PAR) Form

Bidders for RFT and RFP processes are identified on the Procurement Authorization Request (PAR) form as follows:

- For each Bid not disqualified due to Major Irregularities, the Bidder is listed with the Bid amount
- For each Bid considered after correction of mathematical errors, the corrected amount is listed beside the amount which was first made publicly available, and
- For each Bid disqualified due to a Major Irregularity, the Bidder (name only, no Bid price) is listed, along with the reason for disqualification in the Disqualified Bids section

Pre-selected Bidders resulting from RFEI and RFPQ processes are identified on the PAR form as "accepted".

Updating the Public Record (Website)

Bid results, including Bidder names and total Bid amounts, if applicable, are posted on the Website immediately on bid closing. The results are preliminary only, subject to Review and/or Evaluation in accordance with the Bid Request and this policy. Immediately upon Award or pre-selection, the Buyer must update the Website to show:

- The awarded or pre-selected Bidder(s) and corrected Bid amounts (if applicable), and

- Disqualified Bidder(s), stating only that the Bid was disqualified

Revision History

Reference	Description
GC-0016-2002 - 2002 01 16	
LT - March 22, 2012	Policy revised to apply to HVA only. Combined with Bid Irregularities policy, now rescinded
August, 2015	Revised policy to reflect definition of Commissioner in By-law 0188-2015
December, 2015	Scheduled review – no changes
November 30, 2017	Housekeeping to remove definition for BAR form – not applicable to the policy.
March 30, 2020	Removed references to Bid openings which are now covered by a separate policy; other minor changes as applicable for electronic bidding and related changes to business process.
LT – April 13, 2023	Scheduled review. Revised to include procedures for the review and evaluation of HVA Bids.
April 27, 2023	Housekeeping revision to clarify “Major Irregularities”.