

Policy Title: Bid Awards and Bid Protests

Policy Number: 03-06-08

Section: Corporate Administration

Subsection: Acquisition/Disposal of Goods and Services

Effective Date: January 1, 2017

Last Review Date: May, 2023

Approved by:

Owner Division/Contact:

Council

Procurement Services, Corporate Business Services Division, Corporate Services Department

Policy Statement

Contracts for the supply of Goods and/or Services are Awarded in accordance with this policy and the Procurement By-law 0013-2022, as amended. Bidders have the right to register a Formal Bid Protest if they consider that the City's actions in conducting procurement activities, such as reviewing and evaluating Bids or recommending the Award of a Contract, have been unfair or inappropriate.

Purpose

This policy outlines the following:

- Communicating with Bidders
- Responding to Bidder objections
- Formal Bid Protest procedures, and
- Obtaining approval to Award Contracts and Contract execution

Scope

This policy applies to original Awards for Medium Value and High Value Acquisitions.

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 - 03-02-08 - 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 a proposal, offer or submission from a Bidder received in response to a Bid Request.

“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 Procurement Services who is assigned responsibility for a particular procurement and who has delegated authority to approve Awards and execute Contracts in accordance with Schedule “B” of the Procurement By-law.

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

“Contract” means an agreement between the City and a supplier for the supply of Goods and/or Services.

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

“Formal Bid Protest” means a request registered by a Bidder with the Office of the City Clerk to make a deputation before General Committee or 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 and/or Services having a value of more than \$100,000, excluding taxes.

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

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

“Notice of Procurement Results” means the written notification from the Buyer to all HVA Bidders, prior to the Award of a Contract.

“Procurement Authorization Request Form” or “PAR Form” means the City’s internal electronic form that is available through Procurement Services. A PAR Form is required to obtain authority to Award a Contract.

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

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

Fairness and Transparency

Each Bid Request must describe the process the City will follow to determine the Bidder(s) to whom a Contract will be Awarded. Bids, including MVA Bids in some cases, are reviewed and evaluated in accordance with the information outlined in the Bid Request and Corporate Policy and Procedure – 03-06-02 - Bid Review and Evaluation – High Value Acquisitions.

All MVA and HVA Awards must be authorized on a PAR Form in accordance with Schedule “B” of the By-law before a Contract is issued. In certain cases identified in the By-law, approval must also be obtained from Council.

Communications are issued to Bidders, as appropriate, to provide:

- Notice of Procurement Results, and/or
- Notice that their Bid is being disqualified

Bidders are given a minimum of three (3) business days (notice period) to raise any questions or concerns. Bidders may also request a debriefing, within the notice period.

Roles and Responsibilities

Divisional Directors

Divisional directors requiring the procurement of Goods and/or Services are responsible for:

- Delegating procurement process responsibility
- Ensuring all applicable Contract Managers and managers/supervisors are aware of this policy and of any subsequent revisions
- Ensuring compliance with this policy, and
- Approving PAR Forms in accordance with this policy and Schedule “B” of the By-law

Chief Procurement Officer

The Chief Procurement Officer is responsible for:

- Approving PAR Forms and Contracts in accordance with this policy and Schedule “B” of the By-law, and
- Reviewing and approving procurement reports to Council, when required

Manager, Procurement Services

The Manager is responsible for:

- Providing guidelines, advice and support to City staff as appropriate
- Providing guidance, training and support to Procurement Services staff

- Ensuring procurement processes are conducted in accordance with this policy, the By-law and related policies
- Approving PAR Forms and Contracts in accordance with this policy and Schedule “B” of the By-law
- Reviewing procurement reports to Council and forwarding them to the Chief Procurement Officer for approval
- Issuing Bid disqualification letters to Bidders, as required
- Managing bidding issues, Bidder disputes and Formal Bid Protests
- Ensuring that all Bidder disputes and/or Formal Bid Protests are settled prior to Award of any Contracts
- Informing Legal Services, the Chief Procurement Officer and other relevant staff of escalating Bidder disputes and Formal Bid Protests or if a Bidder threatens legal action, and
- Preparing a report to Council summarizing the City’s position in the event of a Formal Bid Protest

Procurement Business Partner Managers

Procurement Business Partner Managers are responsible for:

- All responsibilities listed under “Buyer” for procurements assigned to them
- Authorizing PAR Forms and Contracts in accordance with this policy and Schedule “B” of the By-law, and
- Providing support and direction to Buyers in responding to Bidder questions and concerns

Contract Managers

Contract Managers are responsible for:

- Conducting MVA processes as described in this policy
- Reviewing and evaluating MVA Bids and determining the acceptability, final scope and value of the Award, in accordance with the Bid Request and conducting reference checks of Bidders, if required
- Reviewing and/or evaluating Bids received in response to HVA Procurement processes in accordance with Corporate Policy and Procedure - 03-06-02 – Bid Review and Evaluation – High Value Acquisitions
- Signing off on PAR Forms confirming their agreement with the Award recommendation, and
- Assisting in the preparation of responses to Bidders and in the preparation of information to be provided to Council in the event of a Formal Bid Protest

Buyers

Buyers are responsible for:

- Conducting procurement processes in accordance with this policy, the By-law and related policies

- Reviewing and/or evaluating Bids received in response to HVA Procurement processes in accordance with Corporate Policy and Procedure - 03-06-02 – Bid Review and Evaluation – High Value Acquisitions
- Assisting Contract Managers in the review and/or evaluation of Bids received in response to MVA procurement processes, as required
- Assisting the Contract Manager in the event of MVA Bidder questions or concerns, as required
- Issuing a Notice of Procurement Results to all HVA Bidders at the conclusion of the Bid review and/or evaluation process
- Providing first level response to Bidder questions or concerns
- Informing the Manager of escalating or unresolved Bidder disputes
- Informing the Contract Manager of any Bidder disputes and the status of any Formal Bid Protests
- Assisting in the preparation of Council reports, as required
- Preparing PAR Forms and obtaining the appropriate approvals, as outlined in Schedule “B” of the By-law
- Assisting in the preparation of responses to Bidders, providing responses to questions and concerns and in the preparation of information to be provided to Council in the event of a Formal Bid Protest, and
- Maintaining in the Procurement Centre the Contract and all documents and correspondence regarding the procurement including, Bids, evaluation results, correspondence to/from Bidders, Formal Bid Protest documentation and Council reports

Legal Services

Legal Services are responsible for:

- Providing legal advice and support to the Manager, Buyers and/or Contract Managers on Bidder selection, Bid disqualification, objections by Bidders, and Contract negotiations, if requested
- Providing legal advice and support in the event of a Formal Bid Protest
- Notifying the Manager of any Bidder who has brought a lawsuit against the City, and
- Drafting and/or reviewing Contract documents in accordance with Schedule “C” of the By-law

MVA Process

Contract Managers conduct MVA procurements and review and/or 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 unsuccessful 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, working with the Manager, as required.

Following the selection of the recommended Bidder, the Contract Manager requests the Buyer to prepare a PAR Form for authorizations as required in Schedule "B" of the By-law.

Upon approval to Award, the Contract is authorized as required in Schedule "B" of the By-law. The Buyer issues the authorized Contract to the Bidder.

Communicating With HVA Bidders

All Bids are reviewed and/or evaluated in accordance with Corporate Policy and Procedure – 03-06-02 - Bid Review and Evaluation – High Value Acquisitions, which includes required notifications to Bidders. Notifications to Bidders provide for them to receive additional information upon request.

Notice of Procurement Results

The Buyer issues a Notice of Procurement Results to all Bidders. The Notice provides a minimum three (3) business days notice period to Bidders to raise any question or concerns regarding the procurement process. Bidders may also request a debriefing during this period.

Debriefings

Upon request of the Bidder, the Buyer arranges a debriefing meeting with the Bidder and the Contract Manager, and other members of the evaluation team as applicable. The purpose of debriefings is to provide feedback to the Bidder regarding their bid and their scores. Only scores and information regarding the Bidder's Bid can be discussed. Information regarding any other Bidder's Bid or scores is not disclosed.

Following the debriefing, the Buyer will confirm if the Bidder is satisfied with the City's response and information provided. If the Bidder is not satisfied with the City's response and information provided, refer to the process for responding to Bidder objections.

Notice of Bid Disqualification

The Manager issues notice letters to Bidders whose Bids are being disqualified. If the Bidder has questions or concerns, they are required to advise the Manager of specific issues and requests, in writing, within the notice period provided in the letter.

Responding to Bidder Objections

The Buyer should provide an initial response to Bidder questions or objections to the Notice of Procurement Results within 48 hours, where possible. If the Bidder is not satisfied with the response provided by the Buyer, the Buyer will advise that specific issues and requests must be made in writing, for review and response by the Manager.

The Manager should provide a response within 10 business days of receipt of the Bidder's written request, where possible. The response will address the issues raised by the Bidder, with references to the Bid Request and policy, as applicable. Alternatively, at the Bidder's 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 Manager and Buyer will review the evaluation information with the Contract Manager to clarify the details, confirm the reasons for non-selection of the Bid or reasons for disqualification and discuss the information that may be provided 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) business 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 or Council prior to the Bid Award. The Office of the City Clerk will confirm the meeting date to the Bidder and the Manager, in writing. The Manager will prepare a report summarizing staff's position and recommendation(s).

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

The successful Bidder will be notified of the Award:

- Once any Formal Bid Protests have been addressed or the five (5) business days deadline for filing has passed
- All informal Bidder disputes have been settled
- Council approval has been obtained, where required, and
- The PAR Form has been approved

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. 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 and/or Services shall be ordered, requested, delivered or performed until after a Contract is executed.

PAR Form Content

The Buyer prepares PAR Forms in the Procurement Centre. PAR Forms must be completed in full. Bid amounts must be identified and, if different from the recommended Contract Award value, explained in detail. Briefing notes, spreadsheets, evaluation forms or other documents which are necessary to supplement or clarify PAR Form information must be attached. Recommendations for Contract Award should reflect the City's maximum potential spend, based on the amounts and/or quantities set out in the Bid Request, including any options for renewal of the Contract, if applicable.

Reporting to Council

Where, in accordance with the By-law, Council approval of an Award is required, the department head shall report to Council as described in Corporate Policy and Procedure - 02-01-08 - Corporate Reports. The Chief Procurement Officer will require the inclusion of appropriate procurement content, including By-law references and the recommendation(s) in the report.

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. The Buyer prepares the Contract for execution in accordance with Schedule "B" of the By-law. Once executed, Contracts and all related documents are retained in the Procurement Centre.

Record Keeping

The Contract and all related documents are official corporate records and must be kept in accordance with the Records Retention Schedule By-law 0097-2017, as amended.

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.

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March 14, 2022	Housekeeping to reflect Procurement by-law and reorg, other minor admin revisions.
May 17, 2023	Scheduled review. Revised to align with Corporate Policy and Procedure – 03-06-02 – Bid Review and Evaluation – High Value Acquisitions and to avoid duplication of content.