

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 15, 2025**

Last Review Date: **January 2025**

Approved by:

Owner Division/Contact:

Council

**Corporate Business Services
Division/Manager, Procurement Services**

Policy Statement

Contracts for the supply of Goods and/or Services are Awarded in accordance with this policy and the Procurement By-law. 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 Awards for Medium Value and High Value Acquisitions.

Legislative Considerations

This policy complies with the Procurement By-law, 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 the Corporate Policy and Procedure - 03-02-13 - Accessing City Information and Corporate Policy and Procedure - 03-02-12 - Privacy.

Definitions

For the purposes of this policy:

“Award” means the selection by the City of a 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.

“Business Day” means any day other than Saturday, Sunday, a day that is a statutory holiday in the Province of Ontario or any other day on which the administrative offices of the City are closed.

“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 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 formal protest of a Bid Award or disqualification by a Bidder, submitted in writing, within the required time period to the Manager to be heard by the Procurement Review Panel.

“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” has the same meaning ascribed to it in the Procurement Bylaw.

“Manager” means the Manager, Procurement Services or their designate.

“Medium Value Acquisition” or “MVA” has the same meaning ascribed to it in the Procurement Bylaw.

“Notice of Procurement Results” means the written notification from the Buyer to all Bidders, prior to the Award of a Contract, which outlines the results of the Bid evaluation and/or proposed Award of a Contract.

“Procurement Authorization Request Form” or “PAR Form” means the City’s internal electronic form that is available through Procurement Services that is required to secure internal staff

approvals in the administration of a procurement process, including 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.

“Procurement Review Panel” or “PRP” means the City’s internal review panel responsible for addressing Formal Bid Protests. The PRP consists of the Chief Procurement Officer, the director responsible for the applicable procurement, and the Chief Financial Officer and Treasurer.

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

“Statement of Protest” is a form which the Manager may request a Bidder to complete in order for a Formal Bid Protest to be considered by the Procurement Review Panel in instances where the nature of the protest is unclear.

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 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 and Medium Value Acquisitions, and notifications are sent to Bidders in accordance with said policy.

Awards must be authorized on a PAR Form in accordance with Schedule “B” of the Procurement By-law before a Contract is issued. In certain cases, identified in the Procurement 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 of bid disqualification

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
- Approving PAR Forms in accordance with this policy and Schedule “B” of the By-law, and
- Participating, as applicable, in the PRP in the event of a Formal Bid Protest

Chief Financial Officer and Treasurer

The Chief Financial Officer and Treasurer is responsible for participating in the PRP in the event of a Formal Bid Protest.

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
- Participating in the PRP in the event of a Formal Bid Protest

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
- 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 the PRP 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:

- Reviewing and/or evaluating all Bids received in response to a procurement process in accordance with Corporate Policy and Procedure - 03-06-02 – Bid Review and Evaluation – High Value and Medium 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 the PRP 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 and Medium Value Acquisitions
- Issuing a Notice of Procurement Results in accordance with Corporate Policy and Procedure - 03-06-02 – Bid Review and Evaluation – High Value and Medium Value Acquisitions
- Providing first level response to Bidder questions or concerns
- Informing the Manager of escalating or unresolved Bidder disputes
- 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 assisting in the preparation of information to be provided to the PRP in the event of a Formal Bid Protest, and
- Maintaining records including the Contract and all documents and correspondence regarding the procurement including, Bids, evaluation results, correspondence to/from Bidders, Formal Bid Protest documentation and PRP reports, in accordance with the Records Retention By-law 0097-17

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 Procurement By-law

Communicating with Bidders in an 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 Buyer issues a Notice of Procurement Results to all Bidders. Bidders are given three (3) Business Days after issuance of the Notice of Procurement Results (or such greater length of

time as may be specified in the Notice) to raise any questions or concerns regarding the procurement process. Bidders may also request a debriefing during this period.

The Contract Manager should attempt to resolve any concerns which may be raised by unsuccessful Bidders. If Bidders are not satisfied, the matter will be referred to the Buyer, who will either resolve the concern or escalate to the Manager.

Upon expiration of the period to raise questions or concerns or to request a debriefing, and the resolution of any disputes raised within such period, the Contract Manager requests the Buyer to prepare a PAR Form for authorizations, as required in Schedule "B" of the Procurement By-law.

The Buyer issues the authorized Contract to the successful Bidder.

Communicating With Bidders in an HVA Process

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.

Notice of Procurement Results

The Buyer issues Notice of Procurement Results to all Bidders. Bidders are given three (3) Business Days after issuance of the Notice of Procurement Results (or such greater length of time as may be specified in the Notice) to raise any questions or concerns regarding the procurement process. Bidders may also request a debriefing during this period. Questions or concerns posed by Bidders will be responded to as soon as possible, preferably within two (2) Business Days.

Debriefings

If requested by a Bidder, Buyers will provide the Bidder, via email, with their individual debrief score card, outlining their Bid's technical ranking, financial ranking, overall ranking and general comments on the strengths and weaknesses of the Bid. In the event the Bidder is not satisfied with the information provided in the debrief score card, the Bidder must request a debrief meeting within two (2) Business Days after the Buyer has sent the debrief score card.

If the Bidder does not request a debrief meeting, the Bidder will be deemed satisfied with the City's response and information provided.

If requested by a Bidder, the Buyer will then arrange a debrief meeting with the Bidder and Contract Manager to reiterate the debrief score card and answer any further questions the Bidder may have.

The purpose of a debrief 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 debrief meeting, the Buyer will confirm if the Bidder is satisfied with the City's response and information provided. If the Bidder is not satisfied, the Buyer will refer the Bidder to the Manager.

Responding to Bidder Objections

If a Bidder wishes to dispute the Notice of Procurement Results or disqualification decision, the Bidder may submit a Formal Bid Protest. The Bidder must ensure their Formal Bid Protest is received in writing by the Manager within 5 Business Days of being advised by the Manager that a Formal Bid Protest is required in order to proceed.

The Formal Bid Protest must include a detailed statement of the grounds of the dispute, including copies of relevant documents, and identify the form of relief requested. Where the nature of the dispute is unclear, the Manager may request that the Bidder complete a Statement of Protest in order to assemble the information required by the Procurement Review Panel.

Any Formal Bid Protest that is not received in writing within the aforesaid period will not receive further consideration.

Upon receipt of a valid Formal Bid Protest, the Manager will work with the Contract Manager to prepare a report summarizing staff's position and recommendation(s).

The Formal Bid Protest must be heard by the Procurement Review Panel prior to the Bid Award and must take place in a timely manner so as not to delay the Award. The Manager will provide the Bidder with proposed dates and times for the meeting with the Procurement Review Panel. The Bidder will be required to respond with their availability and attend a meeting at one of the proposed days and times or will otherwise have the Formal Bid Protest dismissed.

The PRP may:

- (i) dismiss the Formal Bid Protest; or
- (ii) accept the Formal Bid Protest and direct the Manager to take appropriate remedial action, including, but not limited to, revising the Notice of Procurement Results, and cancelling the Bid Request.

Any action or decision taken by the PRP will be determined according to the merits of each individual case and shall be final. The Manager will confirm the final decision, via writing, with the Bidder.

This policy does not prevent the Bidder from contacting the Office of the City Clerk to make a deputation to Council after the PRP renders their decision. However, the deputation will not prevent City staff from implementing the PRP's decision and proceeding with the procurement and Award of Contract.

Notice of Award

The successful Bidder will be notified of the Award once:

- All informal Bidder disputes have been settled
- Formal Bid Protests have been addressed or, if no Formal Bid Protests are received, once the deadline for filing has passed
- 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, utilizing the standard PAR language, 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. Where contingency (disclosed or undisclosed) is being added that was not included in the Bid Request, a maximum amount of 20% of the total bid price can be added to the PAR at time of authorization, which will be deemed to be a Contract amendment to increase the Contract dollar value pursuant to Corporate Policy and Procedure - 03-06-12 – Contract Amendments and Termination.

Reporting to Council

Where, in accordance with the By-law, Council approval of an Award is required, the applicable 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 within the City's procurement system.

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. |
| 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. |
| December 11, 2023 | Housekeeping changes to reference the Privacy and Accessing City Information policies. |
| GC-0004-2025 – 2025 01 15 | Substantive revision. Revised to include the Procurement Review Panel for addressing Formal Bid Protests. Definitions added/modified. |