

Audit Of Competitive Procurement

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To: Audit Committee

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Principles For Competitive Procurement

Purchasing Bylaw 2006-270

PART II - PURPOSES, GOALS AND OBJECTIVES

2. The purposes, goals and objectives of this By-law and of each of the methods of procurement authorized are:

- (a) to encourage competition among Suppliers;
- (b) to maximize savings for taxpayers;
- (c) to ensure service and product delivery, quality, efficiency and effectiveness;
- (d) to ensure fairness among Bidders;
- (e) to ensure openness, accountability and transparency while protecting the financial best interests of the City of Greater Sudbury;

Objectives

Objectives

The objectives of this audit were to evaluate if:

1. Competitive Procurement activities are being administered in accordance with Finance Services strategy, plans and objectives.
2. Current internal controls and independent monitoring provided by Supplies and Services are effectively designed and operating to provide assurance that Procurement Objectives outlined in the Purchasing By-Law (2006-270) are achieved by Operating Departments; and
3. Risks to the City arising from contracts, agreements and commitments are being managed and maintained at acceptable levels.

Audit Focus

- The focus of this audit was on the quality of competitive procurement
 - Evidenced by an integrated framework of internal controls that is well designed and operating effectively
 - Evidenced by clear and consistently interpreted and applied procurement methods that achieve the City's purposes, goals and objectives as defined in the Purchasing Bylaw

Not An Operations Audit

- City Administrators are happy with the:
 - Level of service
 - Quality of work
 - Competitive pricing
 - Value For Money achieved through the operating contracts and work identified in this audit

Achievement Of Purposes, Goals, And Objectives Of The Purchasing By-Law 2006-270

Inconsistent reporting of the value of contracts awarded

- “All Bid solicitations over \$35,000” was interpreted and posted by the Purchasing Department as:
 - A one-time expenditure expected to exceed \$35,000;
 - Annual expenditures expected to exceed \$35,000;
 - Responses to bid solicitations (based on hypothetical volumes) expected to exceed \$35,000;
 - Expenditures over the base term of the agreement (excludes extension terms) to exceed \$35,000; and,
 - Expenditures over the base term plus extension terms of the agreement expected to exceed \$35,000.

| Quality Of Announcements On Tender Results Web Page (January 2011 to August 2013) | | |
|--|-----|-------|
| Total Number Of Announcements | 337 | |
| Number Of Announcements With “Price” or “HST” Mentioned | 337 | 100% |
| Number Of Announcements With “Term” of Contract Mentioned | 4 | 1% |
| Number Of Announcements With Total Acquisition Cost Provided For Full Term of Award (Including Extensions) | 1 | 0.25% |
| Number with Award Results But No Minutes | 1 | 0.25% |

Purchasing Bylaw – Purchasing Methods

PURCHASING METHODS

14. The purchasing methods for the purchase of Goods, Services or Construction are listed in Schedule "B".

| <u>SCHEDULE "B"</u> | |
|---|--|
| to By-Law 2006-270 of the City of Greater Sudbury | |
| PURCHASING METHODS | |
| Procedure | Cost of Goods or Service |
| Approved Invoice or Petty Cash or Purchase Order <u>(including Blanket Purchase Order)</u> or Purchasing Card | \$1,499 or less (Section 15) |
| Written Contract including but not limited to Purchase Order <u>(including Blanket Purchase Order)</u> or Purchasing Card or Request for Proposal or Request for Tender | \$1,500 to \$35,000 (Section 16) |
| Agreement, Request for Tender or Request for Proposal | \$35,000 or more (Sections 17 and 18) |

Purchases Under \$35,000

Section 16

Quotation Procedure

means an informal procurement method that involves the solicitation of written quotes from Suppliers without formal advertising or receipt of sealed bids;

PURCHASES BETWEEN ONE THOUSAND FIVE HUNDRED (\$1,500) AND THIRTY-FIVE THOUSAND DOLLARS (\$35,000).

16.-(1) Purchasing requirements for Goods, Services or Construction having an estimated Total Acquisition Cost between \$1,500 and \$35,000 may be made by using either a Purchasing Card or Purchase Order, subject to Section 26.

(2) Single purchases of Goods, Services or Construction using a Purchasing Card shall not exceed \$5,000, unless approved by the Agent.

(3) In appropriate circumstances, the Request for Proposal or the Request for Tender processes may be utilized for the purchase of Goods, Services or Construction in this Total Acquisition Cost range.

(4) General Manager shall demonstrate that the selection process used to purchase the Goods, Services or Construction in this Total Acquisition Cost range shall demonstrate that Fair Market Value was achieved.

Purchases Exceeding \$35,000

Section 17

Request For Tender

means a Bid Solicitation used to acquire known Goods, Services or Construction in accordance with specified terms and which is normally awarded to the Lowest Compliant Bid

PURCHASES EXCEEDING THIRTY-FIVE THOUSAND \$35,000 DOLLARS

REQUEST FOR TENDER

17.-(1) A Request for Tender shall be used for purchases exceeding where all of the following criteria apply:

- (a) two or more sources are considered capable of supplying the requirement;
- (b) the requirement is adequately defined to permit the evaluation of tenders against clearly stated criteria; and
- (c) it is intended that the Lowest Compliant Bid will be accepted without negotiations.

Purchases Exceeding \$35,000

Section 18

Request For Proposal

means a Bid Solicitation that is used to acquire Goods, Services or Construction on variable terms, the suitability of which is determined upon multiple factors

PURCHASES EXCEEDING THIRTY-FIVE THOUSAND \$35.000 DOLLARS

REQUEST FOR PROPOSAL

18.-(1) A Request for Proposal shall be used where one or more of the criteria for issuing a Request for Tender cannot be met such as:

(a) owing to the nature of the requirement, suppliers are invited to propose a solution to a problem, requirement or objective and the selection of the supplier is

based on the effectiveness of the proposed solution rather than on price alone;

or

(b) it is expected that negotiations with one or more bidders may be required with respect to any aspect of the requirement.

Achievement Of Purposes, Goals, And Objectives Of The Purchasing By-Law 2006-270

Blanket Purchase Order Agreements

"BLANKET PURCHASE ORDERS (By-Law 2006-270)
12 (2) The Agent shall establish and maintain Blanket Purchase Orders."

- Blanket or Standing Order Agreements often contain special pricing and/or discounts. There is a great opportunity for the City to implement independent monitoring, validation and verification of pricing and discounts once Blanket Purchase Order (Standing Offer) Agreement records are re-established.
- The Finance Purchasing Division has recognized the need to re-establish their Blanket Purchase Order Agreement records, which at this point requires extensive manual research, going back to source documents.

| Action | Number of records | Percent |
|---------------------------------------|-------------------|-------------|
| Population of Blanket Purchase Orders | <u>318</u> | <u>100%</u> |
| Records removed /deleted | 93 | 29% |
| Recommended for renewal | 76 | 24% |
| Recommended for re-tendering | 12 | 4% |
| Records Requiring Update | 10 | 3% |
| Still under review (October 2013) | 127 | 40% |

Achievement Of Purposes, Goals, And Objectives Of The Purchasing By-Law 2006-270

Example – Illustrating An Impact Of Contracts Expired in 2011:

- The Purchasing By-Law (2006-270) requires a competitive process to be initiated when more than \$35 thousand of expenditure is awarded.
- Contract IES06-20 Water/ Wastewater Treatment Chemicals expired on March 31, 2011.
- However, the City continued and paid 60 invoices between April 2011 and August 2013 totaling an amount of \$388 thousand referencing the expired contracts.
- After a failed attempt at tendering in 2011, no competitive tenders were solicited by the City for this procurement over \$35 thousand as required by the Purchasing By-Law.
- Further, no exceptions were reported to Council, nor were Council requested to approve these continued contract extensions beyond their original expiry dates.
- A report should have been provided to Council, requesting approval for the continued contract extensions beyond the original contract expiry dates.

Achievement Of Purposes, Goals, And Objectives Of The Purchasing By-Law 2006-270

Opportunities to Improve Purchase/Tendering Practices

Example – Illustrating Small Volume Purchases Accumulating To A Larger Volume:

- 1) A vendor was awarded Roadside Maintenance work on a call by call basis.
 - Since the value of each “call” averaged under \$3 thousand, an opportunity to bid or quote on the work was not publicly advertised.
 - During the period of our audit review, 43 individual awards of work were purchased from this vendor (38 charged to the same department and account).
 - The value of work awarded added up to \$127 thousand.
 - No current blanket purchase order or open competitive RFT or RFP process was found.

Example – Illustrating Opportunity To Tender Larger Volume Purchases:

- 2) A vendor provides Tires and Tire Repair Services to the City.
 - The total amount of Tires and Tire Repair Services purchased from this vendor exceeded \$590 thousand during the period of our audit review.
 - No current blanket purchase order or open competitive RFT or RFP process was found.

Achievement Of Purposes, Goals, And Objectives Of The Purchasing By-Law 2006-270

Opportunities to Improve Purchase/Tendering Practices

Example – Illustrating Opportunity To Tender Larger Volume Purchases:

- 3) Two key vendors provide HVAC and Mechanical Maintenance and Repair Services for City facilities.
 - Even though both the combined total acquisition costs for HVAC and Mechanical Maintenance and Repairs purchased from these two vendors exceeded \$4.1 million over our period of review, only \$1.1 million of purchases were in reference to a blanket order or contract.
 - No current blanket purchase order or open competitive RFT or RFP process was found in Finance Purchasing central files for \$3.0 million or 3,871 of those transactions.

Achievement Of Purposes, Goals, And Objectives Of The Purchasing By-Law 2006-270

Content of RFP/RFT announcements

- The content of RFT and RFP public advertisements found on the City's Tender Results Web Page was inconsistent.
- The Auditors observed that transparency could be improved if the advertisements consistently provided the following information:
 - Name of the vendor that the contract has been awarded to;
 - Total estimated value of the award;
 - The contract or reference number;
 - The contract start date;
 - The base contract end date;
 - The end dates of any contract extensions;
 - If the contract is similar to a previous contract;
 - The contract or reference number of the previous contract; and
 - The previous contract's end date.

Achievement Of Purposes, Goals, And Objectives Of The Purchasing By-Law 2006-270

Consistency of the City's conflict of interest rules.

- Stakeholders expect the City to demonstrate a clear commitment to integrity and ethical values.
- Conflicts of interest as described in the Purchasing By-Law (2006-270) were not as inclusive as the Municipal Conflicts Of Interest Act.

Purchasing By-Law (2006-270)

RESTRICTIONS

(6) An Employee has an indirect pecuniary interest in any Contract in which the City is concerned, if:

(a) the Employee or his or her spouse or same-sex partner ...

Municipal Conflicts of Interest Act

Interest of certain persons deemed that of member

For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member. R.S.O. 1990, c. M.50, s. 3; 1999, c. 6, s. 41 (2); 2005, c. 5, s. 45 (3).

- If organization policy regarding conflicts of interest are not consistently communicated and applied across the organization, confusion may occur.

Optimum Use Of Investments Made In The PeopleSoft System.

Reliance on manual systems and processes

- Currently, operating department staff place reliance on manual and off-line processes and workarounds instead of using automated functionality and features of the PeopleSoft system.
- The Auditors estimated that 12% of Purchase Order transactions (25% of Purchase Order payments), referred to a PeopleSoft Purchase Orders.
- Auditors noted that such reliance on manual and off-line processes has persisted since amalgamation in 2001.
- The need to implement PeopleSoft Commitment Control and the expanded use of PeopleSoft Purchase Orders was identified in the 2006 Business Plan for Finance Services.

Monitoring And Oversight By Finance Over The Initiation Of Contracts, Agreements and Commitments.

Effects of manual monitoring processes

The following two examples illustrate the need for effective monitoring and oversight of procurement by Finance as a second line of defense, and as part of an effective and integrated framework of internal controls for procurement.

- In 2005, the City issued a tender for Water Main Repairs (the "2005 Tender"). The contract awarded was a unit price contract, but the evaluation was based on an annual estimate that was calculated by multiplying each unit price by the City's estimates of the quantities required. These estimated quantities were based on past volumes of water main repair work. The term of the contract was for three years with the option to extend the contract for two additional one year terms.
- The selected proponent, bid an annual amount of \$247,437.

The City extended the 2005 Tender contract for the full five years, during the term of which the City spent approximately \$8.1 million under the contract, which was over six times the original estimate bid by the selected proponent.

| Actual Expenditures Referring To Contract #2005-45 | | |
|---|-------|----------------------|
| Contract 2005-45 | | |
| Year | #Mths | Expenditures (000's) |
| 2006 | 4 | \$ 543 |
| 2007 | 12 | \$ 1,205 |
| 2008 | 12 | \$ 1,329 |
| 2009 | 12 | \$ 2,051 |
| 2010 | 12 | \$ 1,645 |
| 2011 | 8 | \$ 1,305 |
| 5 YEAR TOTAL | | \$ 8,078 |
| YEARLY AVERAGE | | \$ 1,616 |

Monitoring And Oversight By Finance Over The Initiation Of Contracts, Agreements and Commitments.

Effects of manual monitoring processes

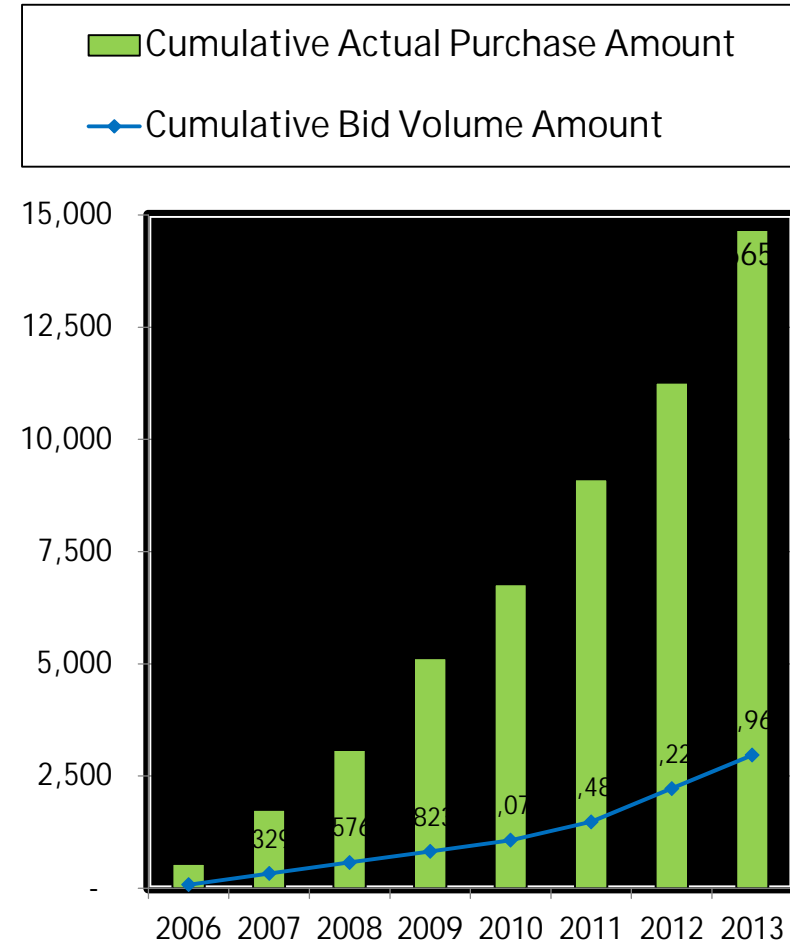
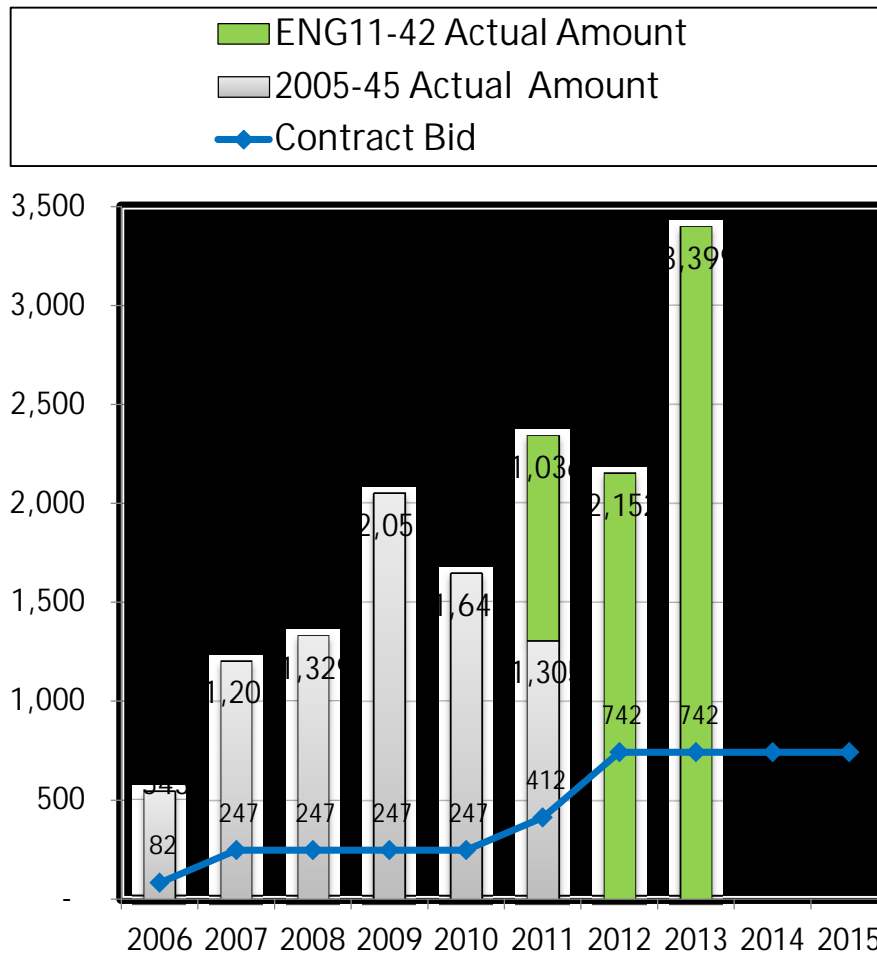
- In 2011, when the 2005 Tender contract expired, the City put out a new tender for emergency water and waste water repairs (the "2011 Tender"). There were relatively minor variances in volume estimated as between the 2005 and the 2011 Tenders.
- These variances were inadequate to reflect the significant increases in actual purchase volumes.
- Based on the increased quantities in the 2011 Tender, the amount of the annual estimate that was bid increased.
- The low bid in the 2011 Tender was again submitted by the same contractor at an annual contract amount of \$740,550.
- Accordingly, the 2011 Tender contract was awarded to the same contractor. The length of the contract was again a three year term with two optional one year extensions.

During the first two and a half years of the 2011 Tender contract, the City spent approximately \$6.6 million under the contract, which was over four times the original estimate bid by the selected proponent.

| Actual Expenditures Referring To Contract ENG11-42 | | |
|---|-------|----------------------|
| Contract ENG11-42 | | |
| Year | #Mths | Expenditures (000's) |
| 2011 | 4 | \$ 1,036 |
| 2012 | 12 | \$ 2,152 |
| 2013 | 12 | \$ 3,399 |
| TOTAL | | \$ 6,587 |
| YEARLY AVERAGE | | \$ 2,823 |

Monitoring And Oversight By Finance Over The Initiation Of Contracts, Agreements and Commitments.

Contracts 2005-45 and ENG11-42 (\$ 000's)



Monitoring And Oversight By Finance Over The Initiation Of Contracts, Agreements and Commitments.

To maximize savings for taxpayers

Management has explained the City's contract cost increased as a result of two main factors.

- a) Increased call volume of repairs due to aging infrastructure, and
 - b) Improved understanding of cost structure
- Value for the taxpayer is obtained, in large part, by ensuring the best price for services required by a public entity.
 - Only by disclosing the full value of a contract would the City be able to ensure that it is obtaining best value and accordingly, it is not clear that this goal has been met with respect to the 2011 Tender.

Monitoring And Oversight By Finance Over The Initiation Of Contracts, Agreements and Commitments.

To encourage competition among suppliers

- In order for there to be true competition as part of a competitive tender process, all information must be equally known by all bidders.
- Generally, the higher the volume of work that is estimated, the more competitive the rates a bidder will be willing to offer.
- It is possible that another competitor could have provided even more competitive rates had they known the true value of the total dollar spend under the contract.

Monitoring And Oversight By Finance Over The Initiation Of Contracts, Agreements and Commitments.

To ensure fairness among bidders

- It would appear that the incumbent service provider, had access to information that other suppliers did not. That is, the incumbent service provider was aware of the actual amount spent by the City during the years of the 2005 Tender, including the trend towards significant annual increased spending in the area.
- The other bidders were only aware of the estimated quantities and the original estimated annual amounts tendered for the 2005 Tender. Full and equal disclosure of all relevant information, including volumes, is integral to a fair process and in this regard, this principle of the Purchasing By-Law may not have been met.
- We also note that Section 12(5) of the Purchasing By-Law provides as follows with respect to Blanket Purchase Orders: "The expected quantity of the specified Goods, Services or Construction to be purchased over the time period of the agreement will be as accurate an estimate as practical and be based, to the greatest extent possible, on previous usage adjusted for any known factors."
- Based on our observations above with respect to the significant increased spend between the 2005 and the 2011 Tender, it appears that the City's processes with respect to the 2011 Tender similarly may not have met this requirement of the Purchasing By-Law.

Monitoring And Oversight By Finance Over The Initiation Of Contracts, Agreements and Commitments.

Should the City decline to extend the 2011 Tender contract for the optional extension years and put the scope of work out as a new tendering process?

- As set out above, given the fact that the estimated quantities were significantly lower than the actual spend, the current 2011 Tender contract may not represent the most accurate and competitive pricing available to the City and therefore could be a breach of the spirit of the City's Purchasing By-Law. By retendering the scope of work with updated estimates that accurately reflect the City's anticipated spend on water main repair work, the City can ensure that it adheres to its Purchasing By-Law.
- Now that the significant increased spending has been identified by the City, it should consider establishing more accurate volume disclosure procedures and mitigating against out of scope expenditures through the implementation of contract ceiling limits.

Recommendation

- Subject to any commitments already made to the incumbent, we recommend that the City consider not extending the existing 2011 Tender contract ENG11-42 for the optional extension years and that the City retender its requirements for its emergency water main and waste water repair work.

Staff Development.

- Only the Manager, Supplies and Services, Purchasing Agent holds the Supply Chain Management Professional (SCMP) designation in the department. The SCMP is the highest achievement in the field and the mark of strategic chain leadership, administered by the Supply Chain Management Association (SCMA) which is the principal source of supply chain training, education and professional development.
- Staff members of Supplies and Services need to follow the annual SCMP CPD requirements to keep abreast with developments in the procurement profession, training which can help bring leading practices to discharge an effective procurement mandate.
- New staff members in the department should be encouraged to pursue the SCMP as they will be equipped with a technical certificate in purchasing which will professionalize the purchasing effort and bring best practices to the function and City operations.
- With Finance Services plans for major change to decentralized procurement processes through expanded use of PeopleSoft ERP purchase order, contract and commitments capabilities, there will be increased reliance on the capabilities of purchasing staff.
- Professional qualifications of purchasing staff may impact the success and achievement of Finance Services' objectives.
- The current staffing approach does not provide for succession planning and staffing key positions in purchasing.

Summary

The Auditor General noted:

1. A risk of continued slippage in the completion of the planned roll out of foundational pieces to improve the City's procure to pay cycle.
2. The need to clean up and improve the administration of Blanket Purchase Order Agreements.
3. The need to improve methods used to estimate and report on the value of awarded contracts on the City's website.
4. The need to improve use of functionality, features and automated controls in PeopleSoft by replacing manual controls currently being used Citywide.
5. The need to improve oversight and monitoring of all purchases through independent spend analysis.
6. The need to improve accountability through performance measures in relation to procurement.
7. The need to improve the current staffing approach to provide for succession planning and staffing key positions in purchasing.

Competitive Procurement

- QUESTIONS?