

For Information Only

Purchasing By-law Amendment

Presented To:	City Council
Presented:	Tuesday, Sep 25, 2018
Report Date	Wednesday, Sep 12, 2018
Type:	By-Laws
By-Law:	2018-187

Resolution

For Information Only

Relationship to the Strategic Plan / Health Impact Assessment

This report refers to operational matters.

Report Summary

The By-law has been updated to include compliance with new trade agreements, language for future electronic bidding and an increase to the competitive tendering threshold.

These changes to the Purchasing By-law are also as a result of the Council approved Auditor General's Performance Audit of Purchasing Services, Report passed on July 10, 2018.

Financial Implications

The cost of implementing E-Bidding will be funded from Council approved operating budgets.

Signed By

Report Prepared By

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Division Review

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Financial Implications

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Background

On September 6, 2018, a report from the Executive Director of Finance, Assets and Fleet was presented to the Executive Leadership Team, highlighting the proposed revisions to the existing Purchasing By-law 2014-1.

This Purchasing By-law 2014-1 has been updated and reflects the following changes:

- 1) Compliance with new trade agreements, namely, The Canadian Free Trade Agreement (CFTA) and Canada-European Union Comprehensive Economic and Trade Agreement (CETA);
- 2) PBL includes language for future electronic bidding (E-Bidding);
- 3) Increase competitive tendering thresholds to >\$100,000.

To be compliant with the trade agreements referenced above, the Purchasing By-law required modification in a number of areas (see attached Appendix A for further details). For ease of reference some definitions have changed and some definitions added as required, (i.e. Multi-Use List, added "any optional extension terms" to Total Acquisition Cost). Another change is that Standing Offers shall indicate how subsequent purchases will be made.

Electronic Bidding will be introduced in the near future, where all competitive tenders and proposals will be advertised and received electronically. Modifications to address E-Bidding have been made to the Purchasing By-law.

E-Bidding will achieve but is not limited to the following benefits:

- a) reduce bid irregularities and the need to reject non-compliant bids;
- b) improve bidder's access to the City's opportunities;
- c) includes a simplified Tender and RFP evaluation process;
- d) and improves tracking of vendor performance;
- e) ease of submitting bids electronically and removes the need to have public tender openings;
- f) will increase the number of bidder's responding to the City's bid opportunities.

The Purchasing By-law 2014-1 has been modified to increase the dollar value of thresholds when tendering for projects greater than \$100,000. The threshold changes comply with requirements of the above mentioned trade agreements. Projects less than \$100,000 may be procured by Authorized Persons (A.P.'s) within the Operating Departments with a prescribed number of Quotations required in accordance with a Request for Quotation procedure.

Increased dollar thresholds will reduce the number of Tenders and RFP's issued by the purchasing section and will shift this purchasing activity to a Request for Quotation

method. Citing Information Reports to Council in 2017, there were 132 projects awarded with a dollar value greater than \$50,000. Nineteen of the projects were between \$50,000 and \$100,000. An increased threshold to \$99,999 will have the A.P.'s in the Operating Departments responsible to conduct their procurement activity. Figures from the Auditor General demonstrate that in 2017 there were 37 P.O.'s issued between \$50,000 to \$99,999. This purchasing activity may now be done by the A.P.'s in the Operating Departments.

These changes to the Purchasing By-law 2014-1 are also as a result of the Council approved Auditor General's Performance Audit of Purchasing Services, Report passed on July 10, 2018.

Next Steps

In order to implement the changes to this Purchasing By-law 2014-1 to realize the above noted benefits there is much administrative work to take place such as the following:

- Update all forms, templates, procedures and policies
- Update the internal and external websites
- Provide mandatory training to Authorized Person's so they are well educated on the new thresholds, and compliance with current Trade Agreements.

Appendix A

Material changes to the PBL 2014-1 as follows:

Part II Purposes, Goals And Objectives 2. (e) added non-discriminatory access (to address Trade Agreements CFTA/CETA)

Part III - Interpretation 4. (1) added definition for "Electronic Bidding" means the online system by which the City issues Bid Solicitations and receives Bids. (added to accommodate our future electronic bidding system)

added definition for "Multi-Use List" means a list of pre-qualified Suppliers maintained by the city who satisfy the conditions for participation on the list and that the City intends to use more than once. (added to address Trade Agreement CETA)

added "or electronic Bids" to "Quotation Procedure" (to address future electronic bidding system)

added "any optional extension terms" to "Total Acquisition Cost" (to address Trade Agreements CFTA/CETA)

Part IV -General Procurement Policy Application 5. (3) added (3) The Agent may elect to use Electronic Bidding and the procurement process will be stated in the Bid Solicitation. (added to address future electronic bidding system)

Council Approval And Information Reports 8 (1)-(5) All thresholds of \$50,000 or more changed to read \$100,000 (changed to reflect increased thresholds)

Notification of Procurement Opportunities 10. (1) "Total Acquisition Cost of \$100,000" (changed to reflect increased thresholds).

Procurement Methods 12. \$4,999 or less (Section 13)

\$5,000 to \$24,999 (Section 14)

\$25,000 to \$99,999 (Section 15)

\$100,000 or more (Sections 16 and 17)

(changed table to reflect increased thresholds).

Sections 13 to 17 thresholds changed to reflect the above table of \$value increases in the thresholds.

Standing Offers 19. added (3) In issuing a call for a Standing Offer, the city shall indicate how subsequent purchases will be made from a Supplier under the Standing Offer. (to address Trade Agreements CFTA/CETA)

Request for Pre-Qualification 21. added after Authorized Person, "through the Agent" (added to ensure an oversight on the Pre-Qualification process)

added "The City may establish, maintain and renew a Multi-Use List of Suppliers for the purpose of a procurement process for the purchase of Goods, Services or Construction pursuant to the provisions of this By-law based on Suppliers who have satisfied the conditions for participation on the list by way of a pre-qualification process. (added to address Trade Agreement CETA)

Appendix A

Non Competitive Purchases 22 (2) Now reads: "Any Non-Competitive Purchase with a Total Acquisition Cost between \$10,000 and \$99,999 must be approved by the Agent prior to any Award by an Authorized Person." (changed to address more oversight/justification on non-competitive purchases <\$100K, referenced in Trade Agreements CFTA/CETA limited tendering provisions)

Emergency Purchases 26 (2) changed "is \$100,000 or more". (threshold \$ value changed to reflect increase in the thresholds)

Added (3) Award of Non-Competitive Purchases with a Total Acquisition Cost of \$100,000 or more shall require Council approval in accordance with paragraph 8(1)(d).

Disqualification of Bidders or Suppliers 37 (2) added in "the Chief Administrative Officer" the Agent and the applicable ELT Member agree, in consultation with the City Solicitor, in their absolute sole discretion that one of the following circumstances has occurred:

added in "one of the following circumstances has occurred:" (added to address Trade Agreements CFTA/CETA)

(i) the Bidder or Supplier is bankrupt or insolvent

(k) the Bidder or Supplier has made a false declaration(s); or,

(l) the bidder or Supplier has committed professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Bidder or supplier." (added to address Trade Agreements CFTA/CETA)

(3) added in "the Chief Administrative Officer", the ELT Member and the Agent,

(4) added in "the Chief Administrative Officer", the ELT Member and the Agent,

Schedule "A" Other (8) added after relocation, maintenance (added to address maintenance requirements when work only required to a utility or rail infrastructure)

add Other (12) "The existence of exclusive rights for Goods previously acquired, such as proprietary, patent, copyright, license or warranty restrictions" (added to address when no other supplier or services may provide such goods or services for technical reasons or interchangeability or interoperability exists).

Schedule "B"

Irregularity

1. Late Bid

Added "Electronic Bidding system"

Response

Shall not accept late bid submissions. (to address future electronic Bidding)

8. All required sections of Bid documents not completed.

Automatic rejection unless, in the opinion of the Agent, the incomplete nature is trivial or insignificant in which case four (4) business days shall be provided to complete the required sections.

9. All required Bid documents not Submitted

Automatic rejection unless, in the opinion of the Agent, the bid document(s) not provided Contains information which is trivial or Insignificant in which case four (4) business Days shall be provided to submit the documents

Appendix A

12. Bids Containing Clerical Errors, which are trivial or insignificant

Four (4) business days to correct and initial errors. The determination of what constitutes trivial or insignificant errors shall be made in the opinion of the Agent.

13 (b) Failure to include a signature of the person authorized to bind the Bidder in the space provided in the Bid documents.

The Electronic Bidding system shall not accept Bids unless the Bidder has checked a box confirming authority to submit a Bid on behalf of The bidder.

16. Bids, in which all necessary Addenda have not been acknowledged.

Automatic rejection unless in the opinion of the Agent and the applicable ELT member in consultation with the City solicitor, the addendum (addenda) does not significantly impact the bid, in which case the Bidder will be provided four (4) Business days to formally acknowledge the addendum (addenda) with no change or amendment permitted to the financial Bid. Electronic Bidding shall not accept Submissions where all addenda have not been Acknowledged.

17. Bid not submitted through Electronic Bidding.

Automatic rejection.

The above numbers have a change and the change is shown in the response to the irregularity. Number 17 is an addition.

Insignificant and trivial irregularities will no longer need to be provided to the ELT Member, nor the City Solicitor for review.