



Procedures for the Procurement of Goods, Services and Construction

As approved by Common Council December 5, 2011

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1.0 DEFINITIONS

In this policy, the following capitalized words and expressions shall have the following meanings:

"Amendment" means an increase or decrease to an existing Contract related to a change in scope that is unanticipated;

"Award" means authorization to proceed with the Purchase of Goods, Services and Construction from a chosen Supplier;

"Best Value" means the optimal balance of performance and cost determined in accordance with a pre-defined evaluation plan;

"Bid" means an offer or submission from a Supplier in response to a Bid Solicitation;

"Bid Solicitation" means a formal request for bids that may be in the form of a Request for Quotations, Request for Qualifications, Request for Tenders, Request for Proposals or Request for Standing Offer;

"Budget(s)" means Council approved annual General Fund Operating and Capital Budgets and Saint John Water Operating and Capital Budgets, including authorized revisions;

"City" means The City of Saint John;

"Construction" means a Construction, re-Construction, demolition, repair or renovation of a building, structure, property, land or other non infrastructure related civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, the supply of products and materials and the supply of equipment and machinery if they are included in and incidental to the Construction, and the installation and repair of fixtures of a building, structure or other non infrastructure related civil engineering or architectural work, but does not include Professional Services related to the Construction Contract unless they are included in the procurement;

"Contract" means a binding agreement by way of a Purchase Order or Purchase Order incorporating a formal agreement or a formal agreement between two or more parties that creates an obligation to do or not to do a particular thing;

"Council" means the Mayor and Common Council of The City of Saint John;

1.0 **DEFINITIONS (Cont'd)**

"Department Head" means the person appointed by Council or the City Manager to be responsible for the operation of a City Department. This term can apply to, but is not limited to, the positions of; Commissioner, Fire Chief or Department Manager;

"Division" - means an organizational unit, within a Department headed by a Division Manager;

"Division Manager" is the person appointed by Council, the City Manager or a Department Head to be responsible for the operation of a Division. This term can apply to, but is not limited to, the position of; Deputy Commissioner, Deputy Fire Chief, Director or Division Manager;

"Electronic Tendering" means the use of a computer-based system directly accessible by Suppliers irrespective of their location that provides them with information related to Bid Solicitations; ie –NB Online Web Site and/or City of Saint John Home Page;

"Goods" means chattels including,

- a. the costs of installing, operating, maintaining or manufacturing such chattels, and
- b. raw materials, products, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a Construction Contract;

"Holdback" means an amount deducted from any payment made by the City under the Contract and retained by the City pursuant to the *Mechanics' Lien Act* to ensure the complete performance of the Contract;

"Lowest Compliant Bid" means the Bid that will provide the City with the desired Goods, Services and Construction at the lowest cost and which meets all the specifications;

"Materials Management" means the Purchasing Agent and his/her designated staff responsible for performing the procurement functions of the City, in accordance with this Policy;

"Purchase" means to acquire Goods, Services or Construction by outright purchase, rental, lease or trade;

"Professional Services" means Services requiring the skills of Professionals for a defined service requirement or for a specific project related deliverable including but not limited to the areas of health and wellness, engineering, architecture, design, planning, information technology, financial auditing and fairness commissioners;

"Progress Payment" means a payment made under the terms of a Contract after the performance of part of the Contract but before the performance of the whole Contract;

1.0 **DEFINITIONS (Cont'd)**

"Purchase Order" means a written offer to a Supplier formally stating all terms and conditions to Purchase Goods, Services or Construction or a written acceptance of an offer received in accordance with this policy;

"Services" means the provision of labour or labour and materials by tradesmen including but not limited to plumbers, electricians, cleaners, auto repair, etc.;

"Standing Offer" means an offer from a Supplier that allows the City to Procure/Purchase frequently ordered Goods, Services or Construction from said Supplier at prearranged prices, under set terms and conditions;

"Supplier" an individual or a corporation in the business of providing goods, services or construction materials and/or services for a fee;

"Tender" means a written, formal offer from a Supplier, received in response to an advertised Request for Tenders.

"Terms of Reference" includes any and all stated objectives, scope, deliverables, specifications, terms and conditions of a Bid Solicitation.

To establish the definition of any other purchasing term not herein included, reference shall be made to the latest edition of the *National Institute of Governmental Purchasing Guide*.

2.0 GENERAL PROCUREMENT PROCEDURES

2.1 Contract Award

The within procedures shall be followed when making a Contract Award or a recommendation of a Contract Award to Council.

2.2 Trade Agreements

- a) Procurement by the City is subject to the provisions of the *Public Purchasing Act* of the Province of New Brunswick and amendments thereto as well as internal trade agreements.
- b) Where the *Public Purchasing Act* or an applicable trade agreement is in conflict with this Policy, the Act and/or the trade agreement shall take precedence.
- c) Materials Management shall advise the relevant approving authority where a procurement action does not comply with applicable legislation or trade agreements as early as possible in the procurement process.

2.3 Notification of Procurement Opportunities

- a) Notification of procurement opportunities exceeding \$25,000 for Goods, \$50,000.00 for *Services* and \$100,000 for Construction shall be made by open Electronic Tendering means.
- b) Notification of procurement opportunities by means of open Electronic Tendering may be complemented by other means.
- c) Notifications of procurement opportunities below the thresholds stated in Subsection 5.3 (a) may be made by means of open Electronic Tendering.
- d) If means other than Electronic Tendering is used for notification of procurement opportunities, Material Management shall ensure wide dissemination and equal opportunity for Suppliers.
- e) Bidders lists may be maintained in exceptional circumstances for specific Goods, Services and Construction where open Electronic Tendering or other notification means will not notify the specific Supplier community of the opportunity.

2.4 Procurement Documentation

- a) In order to maintain consistency, Materials Management shall prepare and distribute procurement documentation. Materials Management may also provide instructions to Division Managers on procurement policies and procedures and on the structure, format and general content of procurement documentation.
- b) Materials Management shall review proposed procurement documentation with the Division Manager to ensure clarity, reasonableness and quality and shall advise the Division Manager of suggested improvements.
- c) Procurement documentation shall avoid use of specific products or brand names.
- d) In procurement documentation, preference shall be given to the use of standards that have been certified, evaluated, qualified, registered or verified by independent nationally recognized and industry-supported organizations such as the Standards Council of Canada.
- e) Notwithstanding subsection 2.4 c), a Division Manager may specify a product or brand name for essential functionality purposes to avoid unacceptable risk or for some other valid purpose. In such instances, the Division Manager and Materials Management shall manage the procurement to achieve a competitive situation if possible.
- f) Division Managers shall:
 - i. give consideration to the need for value analysis comparisons of options or choices,
 - ii. ensure that adequate value analysis comparisons are conducted to ensure that the specifications will provide Best Value, and
 - iii. forward the value analysis to Materials Management for documentation on the procurement file.
- g) Materials Management shall issue and maintain guidelines for the documentation and content of Terms of Reference and general scopes of work.

2.5 Initiation or Cancellation of a Bid Solicitation

Material Management may, at its sole discretion, require approval of the Department Head for the initiation or the cancellation of a Bid Solicitation.

2.6 Confidentiality

- a) The Division Manager and Materials Management shall ensure that the confidentiality of any Bid submitted is maintained in accordance with the provisions of the *Right to Information and Protection of Privacy Act*, as amended.
- b) Notwithstanding the requirements of 2.6 a), in the case of an invited or publically advertised Request for Tender, the name and address of the successful Bidder, the product information, the bid price and the delivery information shall be made public upon request.
- c) In the case of a response to a Request for Proposals, only the name and address of the bidders will be made public prior to Award. After Award, only non proprietary information about the successful bidder's proposal will be made public, all other information is subject the *Right to Information and Protection of Privacy Act*.

2.7 Land Interest

Where land interests are required for a construction project, the Department Head shall cause the said land interests to be secured before the Bid Solicitation process is initiated.

3.0 BID AND CONTRACT ADMINISTRATION

3.1 Submission Of Bids

Tenders shall only be accepted in paper form, ensuring confidentiality and security including maintaining the “sealed” nature of bids as long as necessary, where required. Other Bids may be accepted by facsimile, electronically or by any other means when so stipulated in the Bid Solicitation document, and subject to Materials Management having in place appropriate arrangements to receive said Bids.

3.2 Over Budget Bids

If the tender price of the Lowest Compliant Bid exceeds the City’s project budget or the Division Head’s estimate for the project, the City may proceed with negotiations with the lowest compliant bidder. Said negotiations shall be conducted within a prescribed time frame to identify changes in scope and/or quantities of work, in exchange for a corresponding bid price reduction. Where the City and the lowest compliant bidder establish acceptable changes and a corresponding bid price reduction, those changes shall be documented as post bid addendum.

Any such negotiations or resulting recommendations shall be conditional and subject to the approval of Common Council and, in accordance with the Limitation of Liability and Waiver set out in these procedures, there shall be no liability resulting from any failure to award a Contract.

Where acceptable changes and a corresponding bid price reduction cannot be successfully negotiated with the lowest compliant bidder, the City may proceed with a new Bid Solicitation at a later date.

3.3 Equal Bids

If equal bids are received as a result of a Bid Solicitation, factors which may be considered in breaking the tie include but are not limited to:

- i. prompt payment discount,
- ii. when delivery is an important factor, the bidder offering the best delivery date will be given preference,
- iii. a bidder in a position to provide better after sales service, with a good record in this regard, will be given preference,
- iv. a bidder with an overall satisfactory performance record will be given preference over a bidder known to have an unsatisfactory performance record.

3.4 Guarantees Of Contract Execution And Performance

Bid Bond

- a) The Division Manager and Materials Management may require that a bid be accompanied by a Bid Bond or other similar security to guarantee entry into a Contract, and the Bid Solicitation documents shall be drafted accordingly.

Performance Bond

- b) In addition to the Bid Bond referred to in paragraph a), the successful Supplier may be required to provide,
- i. a Performance Bond to ensure the performance of the Contract, and
 - ii. a Payment Bond to guarantee the payment for labour and materials to be supplied in connection with the Contract.

Security

- c) The Division Manager and Materials Management shall select the appropriate means to guarantee execution and performance of the Contract. Means may include, but are not limited to, financial bonds or other forms of Security, provisions for liquidated damages, Progress Payments, and Holdbacks.
- d) The Division Manager and Materials Management shall ensure that the guarantee selected will:
- i. be sufficient to cover financial risks to the City,
 - ii. provide flexibility in applying leverage on a Supplier so that the penalty is proportional to the deficiencies, and
 - iii. comply with provincial statutes and regulations.
- e) Financial bonds for Contract performance shall be required in all cases where the total contract cost for a Construction Contract exceeds \$100,000 and where the City will be exposed to costs if the selected Contractor does not complete the requirements of the Contract.

Insurance

- f) Prior to commencement of work and where appropriate, the City may request evidence that Liability Insurance Coverage, satisfactory to the City's Insurance Coordinator, has been obtained, naming the City as an additional insured.

Worksafe NB

- g) Prior to commencement of work and where appropriate, Vendors shall provide a Certificate of Clearance from WorkSafeNB.

Holdback

- h) In addition to any other requirements contained in these procedures, for all Construction Contracts under which a lien may arise under the *Mechanics Lien Act*, the City shall deduct from any payment made pursuant to the contract and retain for a period of sixty (60) days after the completion or abandonment of the Contract:
- i. An amount equal to twenty per cent (20%) of the value of the work done and of the material furnished to be used in the said contract; or
 - ii. Where the value of the work and material exceeds Fifteen Thousand Dollars (\$15,000.00), the amount to be retained shall be equal to fifteen per cent (15%) instead of twenty per cent (20%).

The City shall release the holdback on Construction Contracts when all of the following conditions have been met:

- i. sixty (60) days have passed since the completion or abandonment of the Contract;
- ii. the Contractor provided to the City a statutory declaration to the effect that all expenses incurred by the Contractor in carrying out the Contract have been paid. Said statutory declaration must be signed and sealed by a Commissioner of Oaths, Notary Public or Justice of the Peace;
- iii. the Contractor has provided to the City a certificate issued to The City of Saint John by a lawyer who is in good standing with the Law Society of New Brunswick wherein the lawyer certifies that no mechanics' liens have been filed in the Registry Office with respect to the Contract which remain outstanding sixty-one (61) days after the Contract was completed or abandoned;
- iv. the Contractor has provided to the City a Clearance Certificate from Worksafe NB; and
- v. the Division Manager or designate, under whom the work was performed, certified that the conditions of the Contract have been satisfied.

If deficiencies are identified and remain outstanding prior to the release of the mechanics' lien holdback, then the City may retain from the mechanics' lien holdback an amount equal to twice the City's estimate of the cost of remedying the deficiencies until the said deficiencies are remedied to the satisfaction of the City.

Contractors are required to provide a separate invoice for the release of holdbacks.

Payment Withheld

- i) Where the Contractor does not provide a statutory declaration or does not complete the Contract or fulfill all its obligations under the Contract, the City may withhold payment of the monies which would otherwise have become due under the Contract, and during this time, the City shall not be required to pay interest.

Right of Set-Off

- j) Without restricting any right of set-off given or implied by law, the City may set-off against any amount payable to a Contractor under a Construction Contract, any payment due to the City by the Contractor under the said Construction Contract or the City's estimate of the dollar value of deficiencies which the City identified under the Construction Contract. Without restricting the generality of the foregoing, the City may, when making payments under the Contract, deduct from the amount payable by virtue of the right of set-off from the Contractor.

3.5 Contractual Agreement

- a) The Award of Contract may be made by way of an agreement, or as a Purchase Order.
- b) A Purchase Order should be used when the resulting Contract has a value less than \$100,000 and shall contain the terms and conditions of the relevant Bid Solicitation.
- c) A formal agreement should be used when the resulting Contract has a value greater than \$100,000 and/or is complex in its requirements and may contain terms and conditions other than the City's standard terms and conditions.
- d) It shall be the responsibility of the Division Manager with Materials Management and the City Solicitor to determine if it is in the best interest of the City to issue a Purchase Order or establish a formal agreement with the Supplier.
- e) Where a formal agreement is required, the said formal agreement shall be reviewed and approved by the City Solicitor, and executed by the Mayor and Common Clerk once the appropriate resolution of Common Council is in place.
- f) Where a formal agreement is not required, Materials Management shall issue a Purchase Order incorporating the terms and conditions relevant to the Award of Contract.

3.6 Exercise Of Contract Renewal Options

- a) Where a Contract contains an option for renewal, the Division Manager may authorize Materials Management to exercise such option provided that:
 - i. the Supplier's performance is considered to have met, or exceeded, the requirements of the Contract, and
 - ii. the Division Manager and Materials Management agree that the exercise of the option is in the best interest of the City, and
 - iii. funds are available in appropriate accounts within the Budget(s) including authorized revisions to meet the proposed expenditure.
- b) The Division Manager, pursuant to paragraph a), shall provide to Materials Management a written explanation of why the renewal is in the best interest of the City and include comments on the market situation and trends.
- c) Unless otherwise stated in the bid documents, inflationary increases for Contract renewal shall be limited to fifty percent (50%) of the Statistics Canada annual CPI unless the Supplier can demonstrate, to the satisfaction of Materials Management, that its costs have increased significantly from the original Contract price and these cost increases can be independently verified by the Materials Management.

3.7 Contract Amendments And Revisions

- a. No Amendment or revision to a formal Agreement shall be valid unless the Amendment is in the best interest of the City, is in writing and is signed by both parties to the Agreement.
- b. There shall be no Amendment that changes the price of a Contract unless there is a corresponding change in requirement or scope of work.
- c. Amendments to Contracts are subject to the identification and availability of sufficient funds in appropriate accounts within Council approved Budgets including authorized revisions.
- d. The City Manager may authorize an Amendment to a Contract provided that the total amended value of the Contract is within the approval authority of the City Manager set out at section 4.1 of the City's Procurement Policy.
- e. Council approval is required for an Amendment to a Contract where the total amended value of the procurement exceeds the City Manager's approval authority set out at section 4.1 of the City's Procurement Policy.

3.8 Execution And Custody Of Documents

- a) Division Managers are authorized to execute procurement documents in the name of the City for which the Award was made by delegated authority.
- b) Materials Management shall have the authority to execute Purchase Orders and to establish Standing Offers in accordance with this policy.
- c) Materials Management and the Common Clerk shall be responsible for the safeguarding of all original procurement and Contract documentation, in accordance with the applicable rules, legislation and Regulations.

3.9 Bidders List

- a) Materials Management shall maintain a list of bidders who have expressed a desire and the ability to compete for City business,
- b) Companies and individuals on this list may be notified of quotations and tenders for goods and services in which they have expressed an interest,
- c) Bidders who fail to respond to three consecutive Bid Solicitations, without explanation, may be removed from this list,
- d) The Division Manager shall document evidence and advise Materials Management in writing when the performance of a Supplier has been unsatisfactory, whether it be failure to meet Contract specifications, terms and conditions, contract deadlines or because of Health and Safety violations,
- e) Upon receipt of a Supplier's performance details, Materials Management, in consultation with the Division Manager, and the City Solicitor may preclude an unsatisfactory bidder from competing on future Bid Solicitations.

3.10 Receipt Of Goods

- a) The Division Manager shall,
 - i. upon receipt of the Goods, arrange for the prompt inspection of said Goods to confirm compliance with the terms of the Contract, and
 - ii. inform Materials Management of discrepancies immediately.
- b) Materials Management shall coordinate an appropriate course of action with the Division Manager for non-compliance or discrepancies.

3.11 Access To Information

Unless otherwise stated herein, the disclosure of information received relevant to the issue of Bid Solicitations or the Award of Contracts emanating from Bid Solicitations shall be made by the appropriate officers in accordance with the provisions of the *Right to Information and Protection of Privacy Act*, as amended.

3.12 No Preferential Treatment

Pursuant to s. 4 of the *Public Purchasing Act*, the City shall not give preference to any bidder based on their geographic place of business.

3.13 Reserved Rights

In any of its Bid Solicitation, the City reserves the right to:

- a) Reject an unbalanced Tender. For the purpose of this section, an unbalanced Tender is a Tender containing a unit price which deviates substantially from, or does not fairly represent, reasonable and proper compensation for the unit of work bid or one that contains prices which appear to be so unbalanced as to adversely affect the interests of the City. The City reserves the right to use Tenders submitted in response to other like or similar Requests for Tenders as a guideline in determining if a bid is unbalanced.
- b) Amend or modify the scope of a project, and/or cancel or suspend the Bid Solicitation at any time for any reason.
- c) Require vendors to provide additional information after the Closing Date for the Bid Solicitation to support or clarify their bids.
- d) Not accept any or all bids.
- e) Not accept a bid from a bidder who is involved in litigation, arbitration or any other similar proceeding against the City.
- f) Reject any or all bids without any obligation, compensation or reimbursement to any bidder or any of its team members.
- g) Withdraw a Bid Solicitation and cancel or suspend the Bid Solicitation process.
- h) Extend, from time to time, any date, any time period or deadline provided in a Bid Solicitation (including, without limitation, the Bid Solicitation Closing Date), upon written notice to all bidders.

- i) Assess and reject a bid on the basis of
 - i. information provided by references;
 - ii. the bidder's past performance on previous contracts;
 - iii. information provided by a bidder pursuant to the City exercising its clarification rights under the Bid Solicitation process;
 - iv. the bidder's experience with performing the type and scope of work specified including the bidder's experience;
 - v. other relevant information that arises during a Bid Solicitation process.
- j) Waive formalities and accept bids which substantially comply with the requirements of the Bid Solicitation.
- k) Verify with any bidder or with a third party any information set out in a bid.
- l) Disqualify any bidder whose bid contains misrepresentations or any other inaccurate or misleading information.
- m) Disqualify any bidder who has engaged in conduct prohibited by the Bid Solicitation documents.
- n) Make changes including substantial changes to the bid documents provided that those changes are issued by way of addenda in the manner set out in the Bid Solicitation documents.
- o) Select any bidder other than the bidder whose bid reflects the lowest cost to the City.
- p) Cancel a Bid Solicitation process at any stage.
- q) Cancel a Bid Solicitation process at any stage and issue a new Bid Solicitation for the same or similar deliverable.
- r) Accept any bid in whole or in part.
- s) Accept a bid which contains the following errors:
 - i. error in mathematics – whether this involves the extension of a unit price or an error in addition, the mistake will be corrected and the correct total will be used for evaluation purposes and will be binding on the tenderer;
 - ii. conflict between the written and numerical bid prices. In all cases the total bid price will be corrected to reflect the written bid price, whether lump sum or unit price.

And these reserved rights are in addition to any other express rights or any other rights which may be implied in the circumstances and the City shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any

bidder or any third party resulting from the City exercising any of its express or implied rights under a Bid Solicitation.

By submitting a bid, the bidder authorizes the collection by the City of the information set out in this section 7.16.

3.14 Limitation of Liability and Waiver

In every Bid Solicitation, the City shall draft the documents such that each bidder, by submitting a bid, agrees that:

- a) Neither the City nor any of its employees, agents, advisers or representatives will be liable, under any circumstances, for any claims arising out of a Bid Solicitation process including but not limited to costs of preparation of the bid, loss of profits, loss of opportunity or any other claim.
- b) The bidder waives any claim for any compensation of any kind whatsoever including claims for costs of preparation of the bid, loss of profit or loss of opportunity by reason of the City's decision to not accept the bid submitted by the bidder, to award a contract to any other bidder or to cancel the Bid Solicitation process, and the bidder shall be deemed to have agreed to waive such right or claim.