



## STAFF REPORT INFORMATION ONLY

### Report Title

Procurement Process Presentation

<b>Date:</b>	February 25, 2015
<b>To:</b>	TTC Board
<b>From:</b>	Chief Executive Officer

### Summary

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The Materials and Procurement Department is responsible for all procurement, with the exception of Petty Cash purchases, plus the sale of all items declared surplus, including scrap metal. Materials and Procurement is also responsible for the inventory planning, warehousing and distribution of all repetitively purchased items which we stock to provide material specifically to the operating areas throughout the TTC.

The TTC has formalized procurement policies and internal procedures to manage the procurement process and the presentation will highlight some of those processes.

### Financial Impact

This report has no financial impact.

### Issue Background

TTC typically provides a summary of the procurement process at the TTC to every new Board to provide Board members with a better understanding of the processes followed prior to being requested to approve procurement reports.

### Accessibility/Equity Matters

This report has no accessibility or equity issues.

### Comments

The intent of this presentation is to provide sufficient information for the Board to better understand the level of detail included in the procurement process, when the Board reviews reports for procurement authorization.

## **Contact**

Jim Lee, Head of Materials and Procurement

## **Attachments**

Procurement Process Presentation



# PROCUREMENT PROCESS

February 2015





## Procurement Groups Within Materials & Procurement (M&P)

- **Purchasing & Sales**
  - Purchase of Goods & Services for Inventory and Non-Inventory Items
  - Sale of Vehicles (Revenue & Non-Revenue)
  - Sale of Scrap Metals





## Procurement Groups Within Materials & Procurement (M&P)

- **Project Procurement**
  - Purchase of Construction Services
  - Design/Engineering Services
  - Supply & Install Engineered Equipment
  - Purchase of Revenue & Non-Revenue Vehicles
  - Major Project Purchases (Wireless Project, Information Technology Systems, Contracting Out Services, etc.)





## Procurement Types

- Competitive – More than 1 company competing
- Single Source – Only 1 company approved/known
- Sole Source – More than 1 company known but special circumstances exist subject to substantiation





## The Requirement

- Prior to forwarding to M&P, Customer:
  - Reviews delivery models:
    - Design/Bid/Build
    - Construction Management
    - Design/Build
  - Prepares estimate for work based on previous similar work or internal takeoff for construction
  - Reviews Professional Engineers of Ontario guidelines for consulting fee estimates
  - Uses previous history for commodity purchases





## The Requirement

- Customer (client department) Defines Requirement
  - Prepares Specifications & Drawings
  - Technical requirements should be as clear as possible
- Forwards to Materials & Procurement (M&P)







## The Requirement

- Prior to preparing a Request for Bid package, M&P:
  - Reviews Client defined requirements for completeness
  - Reviews commodity packages to determine opportunities to joint purchase with City of Toronto or Province





## **Bid Document (Tender vs Proposal)**

### **Tender**

- Well Defined Requirements
- Generally Price Driven

### **Proposal**

- Less Defined Requirements Performance Specification
- Qualitative Evaluation
- Price Evaluation of those companies that qualify





## **Bid Document (Tender vs Proposal)**

### **Structured Multi Phase Bid Process**

- Specialized requirements with Limited Potential Bidders
  - Revenue & Non-Revenue Vehicles, including Workcars
  - Special Track Work





## **Bid Document (4 Parts)**

- Instructions To Bidders
- Commercial Conditions
- Specifications/Scope of Work
- Bid Form/Proposal Form





## **Bid Document (Instructions to Bidders)**

- Closing Date, Time & Place
- Submission Requirements (Must be appropriate for the requirement)
- Basis For Evaluation/Selection (Based on Bid Document only)
- Other, eg. Bid Security, Performance Bonds, Pre-bid Meetings





## **Bid Document (Commercial Requirements)**

- Payment Terms
- Insurance Requirements
- Liquidated Damages
- Indemnification
- Default/Termination Provisions





## **Bid Document (Technical Requirements)**

- Specifications/Standards
- Drawings
- Schedule Milestones
- Deliverables





## **Bid Document (Form of Bid/Proposal, Offer)**

- Company Name & Address
- Price
- Validity Period (usually 90 days)
- Signature (Binding Offer)
- Acknowledge Addenda
- Mandatory submission requirements
- Bid Bond & Agreement to Bond







## **Bid Document (Request For Bids)**

- If Less Than \$100,000 Bidders List (Purchasing Only)
- If Over \$100,000 Publicly Advertise (MERX)
- Project Procurement Advertises all competitive requirements





## Communications During Bid Process

- TTC Procurement Policy – A Single Point of Contact Through M&P From Issue of Request To Award “Blackout Period” and all communication is coordinated through the single point of contact identified in the Bid Documents
- TTC prohibits lobbying during the procurement process (issuance of a request to award).





## Communications During Bid Process

- City of Toronto Municipal Code, Chapter 140 (Lobbying) provides that:

*Lobbyists shall not communicate in relation to a procurement process except as permitted by applicable procurement policies and procurement documents.*





## Communications During Bid Process

### TTC Procurement Policy:

- The single point of contact may permit other individuals employed or retained by the TTC, including TTC members, officers, employees and a fairness monitor, to be present during any meeting and to communicate with a Bidder relating to any commercial or technical issue arising from the Request.
- Any communication between a Bidder and another individual employed or retained by the TTC shall only occur if the M&P representative (or designate) is present at any meeting, or if the communication occurs outside of the meeting that it be in writing and a copy be provided to the M&P representative (or designate).





## Communications During Bid Process

- Unless expressly stated to the contrary in a TTC Bid Document (Request), an individual cannot “lobby” a TTC Commissioner during the Procurement Process  
*(Chapter 140, City of Toronto Municipal Code and TTC Procurement Policy)*
- Blackout period applies to TTC Commissioners





## Communications During Bid Process

- M&P Co-Ordinates Replies To Bidders
- M&P Issues Addenda To All Bidders For Changes
- Ensure All Bidders Receive Same Information
- Communication with Bidders during a bid period is controlled by the M&P representative assigned to the specific bid or designate
- Games Bidders May Play
  - Incumbents using existing contract as excuse to ask Questions
  - Calling Several Employees





## **Bid Opening (Rules Are)**

- No Bid is accepted after Closing Time
- Under \$100,000 (Informal bid opening)
  - Non-public opening, M&P receives & opens bids





## Bid Opening (Rules Are)

- Over \$100,000 (Formal)
  - Commission Services Department Receives all bids that are submitted prior to the Closing Time
  - All bids are opened in the presence of the public
  - If Tender, names of bidders & Total Price Bid are made public (Tenders Only)
  - If Proposal, only names of bidders that submitted a bid are made public
  - Forwarded to M&P and public information is provided on TTC website







## **Tender/Proposal Law – Based on Supreme Court of Canada (Ron Engineering decision)**

- Ron Engineering Submit Bid based on a Request for Tenders
- Bid period closes.
- Bidder claims error after bid opening - price is incorrect
- No Apparent error on the face of the bid
- Requests withdrawal of its bid without penalty





## Tender/Proposal Law

- Supreme Court of Canada Decision (1983)
- Withdrawal of bid denied
- No error that is apparent of the face of the bid
- Decision has created the basis for the law of tendering & competitive bidding in Canada.





## Tender/Proposal Law

### Principles of the Ron Engineering Decision

- Court has created a two contract scenario (Contract A and Contract B):
- “Contract A” is formed between the Owner and each bidder that provides a bid that is materially compliant with the Request for Bid document. Contract A includes the requirement that the Owner will treat the bidder equally and fairly and that Owner will award “Contract B” based on the terms and conditions as set out in the Request for Bid document. Contract A is formed when a bidder submits a bid that is materially compliant. If bid is not compliant, no Contract A is formed; and





## Tender/Proposal Law

### Principles of the Ron Engineering Decision

Contract A and Contract B):

- “Contract B” is the contract to perform the work entered into between the Owner and the successful bidder. Contract B can only be awarded to a bidder that has submitted a materially compliant bid (i.e. must have a Contract A).
- Lots of litigation since 1983 based on whether an Owner has improperly awarded Contract B to a bidder based on allegations that the bidder’s bid contained a material error that was apparent on the face of the bid
- Failing to sign bid, not providing a mandatory submission requirement etc.





## Tender/Proposal Law

- TTC's past experience – TTC v. Gottardo:
- Similar To Ron Engineering
- Gottardo submits a bid – pricing made public
- Claimed an error with its pricing after public opening
- TTC's position - no error apparent on the face of bid
  - Difference between Gottardo's bid and 2nd low was not unreasonable
  - Difference between Gottardo's bid and TTC's Engineer's estimate was also reasonable
- Gottardo requested that its bid be withdrawn





## Tender/Proposal Law

TTC v. Gottardo:

- TTC attempted to award contract
- Gottardo refused to enter into Contract B
- TTC sued Gottardo for breach of Contract A and made a claim on its Bid Bond
- At Trial: TTC loses and appeals
- Court of Appeal: Trial Judge's decision overturned - Gottardo's bid did not contain an error obvious on the face of its bid and it could not withdraw its bid.





## **Right to reject a compliant bid or not award a contract:**

- Limited right to reject a bid or not award a contract - subject to terms as expressly set out in Bid Document
- Bids Significantly Exceed Budget\*
- Funding Withdrawn

### Cancel The Bid

- \*Re-Bid only with significant changes to requirements or season, if applicable. Need to avoid allegation of “bid shopping”





## Bid Evaluation

- Commercial Evaluation – M&P
- Technical Evaluation, if required – Customer
- Qualitative Evaluation, if applicable – Customer & M&P (may include others)
- On some large projects, independent fairness advisor may also be used to ensure the integrity of the procurement process.
- Evaluators sign a Conflict of Interest Declaration form to ensure that no conflict exists or that any potential conflict is clearly stated prior to evaluation of bids.







## Bid Evaluation

- Price
- Experience (Work of Similar Size & Nature)
- Bid Bond/Agreement To Bond/Letter of Credit
- References





## **Proposal Evaluation (Primarily Design Contracts)**

- Submission Requirements **MUST** Be specific to the Need
- Evaluation Criteria **MUST** Be Disclosed in Bid Document
- Any Weighted Criteria **MUST** Be Established Prior To Closing, Including Weighted Pricing, if Applicable





## Proposal Evaluation

- Team Established For Review, In Advance
- Team Reviews Submissions
- Team Consensus Rating Established Per Criteria
- Best Qualified Bidders Shortlisted





## Proposal Evaluation

- Two Envelop Process
- Qualitative Evaluation First
- Establish Shortlist (Qualified Only)
- Open Pricing
- Evaluate Pricing Based On Bid Document (Generally Weighted Price 30%)





## Proposal Evaluation

- Corporate Qualifications/Experience
- Team Qualifications/Experience (Resumes)
- Methodology, If Applicable





## Proposal Evaluation

### Pricing Evaluation

- Hourly Rates/Composite Rate
- Overall Price
- Weighted Evaluation





## Bid Evaluation

- Valid Bid Form
- Demonstrated Work History
- Compliance With Requirements:
  - Commercial
  - Technical





## Bid Evaluation

### Exceptions

- Exception to a requirement
- TTC has a published list/policy of the most common errors made within a submission and the response (automatic rejection or not). The list is available through the TTC website
- [https://www.ttc.ca/TTC Business/Materials and procurement/Bid Irregularities.jsp](https://www.ttc.ca/TTC_Business/Materials_and_procurement/Bid_Irregularities.jsp)

### Qualification

- Clarify a requirement







## Bid Evaluation

### Errors or Omissions

- Must Be Apparent on the face of the bid to be considered
  - Example, bid bond equal to at least 10% of bid price, but when calculated is only 9.5%.





## Bid Evaluation

Errors or Omissions

If:

- Price Incomplete Or Ambiguous
- Failure To Sign Form of Bid
- Failure To Acknowledge All Addenda (unless the failure does not have a material impact on the intent of the contract)
- Failure to submit/meet all mandatory requirements

Then:

- Bid Unacceptable





## Bid Evaluation

Errors Or Omissions

If:

- Obvious Arithmetic Errors & Bid Document Allows
- Immaterial Omissions (EG. Phone Number)
- Information Included But Not In Correct Location

Then:

- Bid Acceptable





## Bid Evaluation

- Staff evaluates Bids, as submitted
- Compliant Bid is a legally binding agreement
  - (Contract A)
- Open for acceptance as submitted based on the stated validity period





## Changes To The Bid Unacceptable!

- No changes to a Bid accepted after Closing Time
- No information accepted after Closing Time, except as otherwise permitted in Bid Document (Eg. Cost Breakdown, Reference checks)
- No claim for errors/omissions that are not apparent on the face of the bid
  - No scientific formula for determining whether a bid contains an obvious error (*i.e.* price is so low that it must be an error)
  - Each situation is assessed based on its own facts and merits and the specific terms of the Bid Documents





## Evaluation Results

### Acceptable Bid

- Submission is complete and in accordance with Bid Documents
- Meets all mandatory requirements
- Acceptable references (establishing that the Bidder has performed work of a similar size and nature)





## Recommendation for Award (Contract B)

- Lowest Cost/Best Value (qualified) compliant submission
  - Some exceptions to this rule. For example, the standard Bid Documents contain a provision that if a Bidder has received a poor performance rating from the TTC on another TTC contract, TTC reserves the right not to recommend the Bidder for award of a future contract.





## Authorization

- Based on Commission's Authorization For Expenditures And Other Commitments Policy
- Construction Contracts are awarded at a contract price but staff are now including a contract change allowance based on experience to better inform the Board.
- Consultant requirements are generally upset limit contracts with releases based on approved work plans.







## Authorization

- The purchase of day-to-day operating parts includes a contingency value as the awarded contracts are based on estimated quantities. The expenditure is based on actual use.





## Authorization

- Board Report if value exceeds \$5M
- Board Report is a summary of the procurement process, including;
  - Number of bidders
  - Any exceptions, etc





## Contract Award (Formation of Contract B)

### Accept offer of the Bidder

- Notification Of Award Letter
  - Purchase Order
- 
- Contract B (contract to perform the work) is created





## Process Consistency

- Process Consistent & Non-Arbitrary
- Protects Integrity/Fairness Of Procurement
- Eliminates Bias or Favouritism (Real Or Perceived)





## Process Consistency

- Sometimes costs more on individual purchase to ensure integrity/fairness
- Avoid establishing poor/subjective process
- Affects future decisions
- Ensures Bidding community knows and understands the rules and requirements and that each bidder will be given a fair and equal opportunity
- Best value for TTC in long run





## Summary

- Provides TTC with the products & services required to operate the transit system
- Provides open access to TTC business
- Fair to all that participate
- Protects the TTC from costly litigation





## Customer/M&P Responsibilities

### After Award

- All changes **MUST** be appropriately documented
- All changes **MUST** be appropriately authorized
- Document, Document, Document





## Audits

- All contracts are subject to audit
- Audits are ongoing every year
- Audits help identify systemic problems
- Only way to verify compliance with hourly rates







## Contract Standards

- Contract Documents Committee
- Best Practises using other models from City/Province/other Municipalities





## Construction Estimates

- Established using Professional Engineers of Ontario/TTC Guidelines
- Construction Estimates Conducted using accumulated data from previous contracts





## Outreach Efforts

- Regular Meetings with the City of Toronto for Joint Purchasing
- Working with Province to take advantage of Vendor of Record Program
- Regular meetings with construction industry to encourage more bids
- Meetings with Consulting Engineers of Ontario





## Outreach Efforts

- Member of Ontario Public Buyers Association
- Work closely with City of Toronto to compare processes & share information
- Working with Original Equipment Suppliers to improve relationships
- Share procurement information with other public transit organizations;
  - New York/Washington/Chicago/Mississauga/Ottawa/York Region/Montreal/Province of Ontario
  - Encourage debriefings for unsuccessful bidders





## Continuous Improvement

- Exploring alternative contracting strategies
  - Construction Management
  - Design/Build
  - P3
- Comparing TTC standards to others
- Learn from previous contract/claims





## Challenges

- Increasing Quality Bid Submissions for Construction
  - Looking at root causes with industry
  - Could consider open shop contracting
- Specialized Material/Equipment (limited suppliers)
  - Rail
  - Work Cars
  - Vacuum Trucks

