

By-law 2018-187

**A By-law of the City of Greater Sudbury to Amend By-law 2014-1
being a By-law of the City of Greater Sudbury
Governing Procurement Policies and Procedures**

Whereas Council of the City of Greater Sudbury deems it desirable to amend By-law 2014-1 being the Purchasing By-Law of the City of Greater Sudbury;

Now therefore Council of the City of Greater Sudbury hereby enacts as follows:

By-law 2014-1 being a By-law of the City of Greater Sudbury Governing Procurement Policies and Procedures, as amended, is hereby amended by:

1. Repealing subsection 2.(e) and enacting the following subsection in its place and stead:

"(e) to ensure openness, accountability, transparency and non-discriminatory access, while protecting the financial best interests of the City of Greater Sudbury;"

2. Adding to paragraph 4.(1) the following definition immediately after the definition for "Electronic Advertising";

"Electronic Bidding" means the online system by which the City issues Bid Solicitations and receives Bids;"

3. Adding to paragraph 4.(1) the following definition immediately after the definition for "Lowest Compliant Bid";

"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;"

4. Repealing the definition of "Quotation Procedure" in paragraph 4.(1) and enacting in its place and stead:

"Quotation Procedure" means an informal procurement method that involves the solicitation of written quotes from Suppliers without formal advertising or receipt of sealed or electronic Bids;"

5. Repealing the definition of "Total Acquisition Cost" in paragraph 4.(1) and enacting in its place and stead:

“Total Acquisition Cost” means an evaluation of the sum of all costs for the Term of the Contract including purchase price, warranties, service costs, life cycle costs, time of completion or delivery, inventory carrying costs, operating and disposal costs, any optional extension terms, but excluding applicable Harmonized Sales Tax; and,”.

6. Adding the following paragraph immediately following paragraph 5.(2) as paragraph 5.(3) and renumbering subsequent paragraphs accordingly:

“(3) The Agent may elect to use Electronic Bidding and the procurement process will be stated in the Bid Solicitation.”.

7. Repealing paragraphs 8.(1)(c) and 8.(1)(d) and enacting in their place and stead:

“(c) any Multi-Year Contract Award where the Term including any optional extension terms exceeds five years and the Annual Acquisition Cost is \$100,000 or more;

(d) any Non-Competitive Purchase where the Total Acquisition Cost of such Goods, Services or Construction is \$100,000 or more:”.

8. Repealing paragraph 8.(2) and enacting in its place and stead:

“(2) The Agent shall provide regular information reports to Council on the Bid Solicitations, cooperative purchases, Emergency purchases and Revenue Generating Contracts Awarded with a Total Acquisition Cost or revenue of \$100,000 or more.”

9. Repealing paragraph 10.(1) and enacting in its place and stead:

“(1) Bid Solicitations for Goods, Services or Construction with an estimated Total Acquisition Cost of \$100,000 (excluding taxes) or more shall be done by Electronic Advertising and Electronic Advertising may be used for purchases in any other procurement threshold.”

10. Repealing paragraph 12 and enacting in its place and stead:

“12. The following table details the acceptable procurement methods and purchase processes for each individual procurement threshold for the procurement of Goods, Services and Construction. In appropriate circumstances, procurement methods described in the thresholds herein may be utilized for purchases in lower dollar value thresholds.

Subject to Section 8, purchases in all procurement thresholds shall only be made where such purchases are within Council Approved Budgets. The procurement method shall be selected based on the best available estimate of the Total Acquisition Cost at the time of procurement.

Total Acquisition Cost Threshold	Acceptable Procurement Method	Documentation of Purchase	Details
\$4,999 or less (Section 13)	Competitive market place wherever possible. Any method listed below.	Approved Invoice, Petty Cash, Purchase Order or Procurement Card	Purchases made by Authorized Persons.
\$5,000 to \$24,999 (Section 14)	Minimum of one quote. Competitive market place wherever possible. Any method listed below.	Purchase Order, Agreement or Procurement Card	Purchases made by Authorized Persons.
\$25,000 to \$99,999 (Section 15)	Quotation Procedure. Any method listed below.	Purchase Order or Agreement	Purchases made by Authorized Persons or administered by the Purchasing Section on behalf of Authorized Persons.
\$100,000 or more (Sections 16 and 17)	Request for Tender or Request for Proposal. Any method listed below.	Purchase Order or Agreement	Purchase process administered by the Purchasing Section on behalf of Authorized Persons based on specifications, scope or terms of reference provided by Departments.
Any amount (Section 19 – Standing Offer purchases)	Any method listed above based on applicable Total Acquisition Cost.	Purchase Order or Agreement	Purchase process administered by the Purchasing Section on behalf of Authorized Persons based on specifications, scope or terms of reference provided by Departments.

11. Repealing paragraph 13.(1) and enacting in its place and stead:

"Purchases not Exceeding Four Thousand Nine Hundred and Ninety-Nine (\$4,999) Dollars

13. (1) Purchases made pursuant to this Section shall be made by Authorized Persons from the competitive market place wherever possible and may be made by payment on an Approved Invoice or a Purchase Order, through the use of Petty Cash or a Procurement Card."

12. Repealing paragraph 14.(1) and enacting in its place and stead:

"Purchases Between Five Thousand Dollars (\$5,000) and Twenty-four Thousand Nine Hundred and Ninety-Nine Dollars (\$24,999)

14. (1) Procurement procedures for purchases of Goods, Services or Construction between the amounts of \$5,000 and \$24,999 shall be conducted by Authorized Persons. Authorized Persons shall obtain a minimum of one written quote and shall ensure that Fair Market Value is being obtained for the Goods, Services or Construction purchased."

13. Repealing paragraph 15.(1) and enacting in its place and stead:

"Purchases Between Twenty-Five Thousand (\$25,000) and Nine Hundred Ninety-Nine Thousand Nine Hundred and Ninety-Nine Dollars (\$99,999)

15. (1) Purchases between Total Acquisition Cost amounts of \$25,000 and \$99,999 shall be conducted by an Authorized Person except where a Bid Deposit or performance guarantee is required in which case the purchase shall be conducted by the Agent on behalf of the Authorized Person. Procurements using the Quotation Procedure shall be Awarded to the lowest compliant quotation."

14. Repealing paragraph 15.(3) and enacting in its place and stead:

"(3) Authorized Persons, within their respective Purchasing Authority Policy limits, may Award Contracts where the Quotation Procedure is used provided that Awards are made to Suppliers meeting the City's requirements submitting the lowest compliant quotation. Where an Award is not being made to the lowest compliant quotation then the award may only be authorized by the Authorized Person and the Agent jointly. Any Award for a procurement conducted pursuant to this Section where the actual cost

exceeds the \$100,000 Total Acquisition cost threshold shall also require the approval of the Agent.”

15. Repealing paragraph 16.(1) and enacting in its place and stead:

“Purchases of One Hundred Thousand \$100,000 Dollars or More

Request For Tender

16. (1) A Request for Tender shall be used for purchases with a Total Acquisition Cost of \$100,000 or more 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.”

16. Adding the following paragraph immediately following paragraph 19.(2) as paragraph 19.(3) and renumbering subsequent paragraphs accordingly:

“(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.”

17. Repealing paragraph 21 and enacting in its place and stead:

“21. (1) For any of the purchasing methods listed in this By-law, a pre-qualification process may be used where the Authorized Person, through the Agent, wishes to ensure that Suppliers have the necessary experience, qualifications, and resources to provide the Goods, Services or Construction anticipated to be procured. The selection of Bidders to proceed to a procurement method by way of a pre-qualification shall not create any contractual obligation between the City and a pre-qualified Supplier.

(2) 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.”

18. Repealing paragraph 22.(2) and enacting in its place and stead:

“(2) 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.”

19. Replacing all references to \$50,000 in paragraphs 22.(3) and 26.(2) with \$100,000 in accordance with the amendment of paragraph 8.(1)(d).

20. Removing the word ‘Lien’ from the reference to “*Construction Lien Act*”, in paragraph 35.(2) to correctly identify the “*Construction Act*”.

22. Repealing paragraph 37.(2) and enacting the following in its place and stead:

“(2) A Bidder or Supplier may be excluded from eligibility to submit Bids or quotes or a submitted Bid or quote may be summarily rejected and returned to a Bidder or Supplier where 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:”

22. Repealing paragraphs 37.(2)(h) and 37.(2)(i) and enacting in their place and stead:

“(h) the Bidder or Supplier has been convicted of a criminal offence including but not limited to fraud or theft;

(i) the Bidder or Supplier has been convicted of any quasi-criminal offence pursuant to applicable legislation or regulations including but not limited to the *Occupational Health and Safety Act*, as amended, where the circumstances of that conviction demonstrate a disregard on the part of the Bidder or Supplier for the health and safety of its workers, City Employees or the general public;

(j) 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.”

23. Repealing paragraphs 37.(3) and 37.(4) and enacting the following in their place and stead:

“(3) In arriving at a determination for the disqualification of a Bidder or Supplier pursuant to this Section, the Chief Administrative Officer, the ELT Member and the Agent, in consultation with the City Solicitor, will consider whether the circumstances are

likely to affect the Bidder or Supplier's ability to work with the City, its consultants and representatives, and whether the City's experience with the Bidder or Supplier indicates that the City is likely to incur increased staff time and legal costs in the administration of any dealings with the Bidder or Supplier.

(4) Based on the severity of the events leading to the disqualification, the Chief Administrative Officer, the ELT Member and the Agent, in consultation with the City Solicitor, shall establish the duration of the period during which the disqualification shall be effective."

24. Repealing paragraph 5.(8) of Schedule A and enacting in its place and stead:

"(8) Removal, relocation, maintenance and construction related to utility or rail infrastructure".


25. Adding the following paragraph immediately following paragraph 5.(11) of Schedule A:

"(12) The existence of exclusive rights for Goods previously acquired, such as proprietary, patent, copyright, license or warranty restrictions".

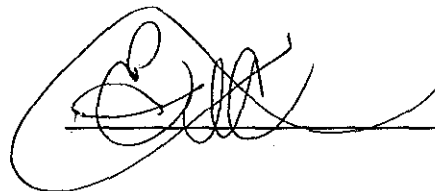
26. Repealing Schedule "B", and enacting, in its place and stead, Schedule "B", attached hereto as Schedule "A" and forming a part of this By-law.

27. This By-law shall come into full force and effect upon passage.

Read and Passed in Open Council this 25th day of September, 2018.



Mayor



Clerk

Schedule "A"
to By-law 2018-187

Schedule "B" – Applicable to Hard Copy and Electronic Bidding

By-law 2014-1 of the City of Greater Sudbury

Page 1 of 4

Unless indicated otherwise by the Agent in writing, where time is provided pursuant to this Schedule such time shall commence upon written notification being sent by the Agent.

	IRREGULARITY	RESPONSE
1	Late Bid.	Automatic rejection. Bid not to be accepted at the counter. If accepted (for example: received by mail) such Bid shall not be opened or read publicly and shall be returned to the Bidder. Electronic Bidding system shall not accept late Bid submissions.
2	Unsealed Submission Package	Automatic rejection.
3	Failure to attend or have a representative in attendance at a Mandatory Information Meeting within the prescribed time period.	Automatic rejection where such meeting is specified as mandatory in the Bid Solicitation.
4	Any other irregularities.	Automatic rejection. The Agent and the applicable ELT Member in consultation with the City Solicitor shall have authority to waive other irregularities or grant four (4) business days to initial or correct such other irregularities determined by them to be trivial or insignificant.
Bid Deposit and Performance Guarantee (Where Required)		
5	No Bid Deposit, performance guarantee or agreement to bond or insufficient Bid Deposit, Performance Guarantee or agreement to bond.	Automatic rejection.
6	Failure to execute agreement to bond (Surety's Consent).	Automatic rejection.
7	Failure to execute Bid Bond by Bidder or Bonding Company.	Automatic rejection.

Schedule "A"
to By-law 2018-187

Schedule "B" – Applicable to Hard Copy and Electronic Bidding

By-law 2014-1 of the City of Greater Sudbury

Page 2 of 4

Bid Documents and Execution		
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 not provided contains information which is trivial or insignificant in which case four (4) business days shall be provided to submit the document(s).
10	Qualified Bids (Bids qualified or restricted by an attached statement).	Automatic rejection unless, in the opinion of the Agent and the applicable ELT Member in consultation with the City Solicitor, the qualification or restriction is trivial or not significant.
11	Bids received on documents other than those provided or specified by the City.	Automatic rejection unless, in the opinion of the Agent and the applicable ELT Member in consultation with the City Solicitor, the intention of the Bidder is clear and the Bid documents do not materially deviate from those provided by the City.
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 (a)	Bids completed and/or signed in erasable medium.	Automatic rejection.

Schedule "B" – Applicable to Hard Copy and Electronic Bidding

By-law 2014-1 of the City of Greater Sudbury

Page 3 of 4

(b)	Failure to include a signature of the person authorized to bind the Bidder in the space provided in the Bid documents.	Automatic rejection. Where the Bidder has provided a signature that does not appear to be an original signature (for example: a photocopy) the Bidder shall be provided with four (4) business days to provide an original signature. 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.
14 (a)	Uninitialed changes to the Tender documents, other than unit prices, which are trivial or insignificant;	Four (4) business days to initial changes. The determination of what constitutes trivial or insignificant uninitialed changes shall be made in the opinion of the Agent.
(b)	Unit prices in the Schedule of Prices have been changed but not initialed and the Contract totals are consistent with the price as changed;	Four (4) business days to initial change in unit price.
(c)	Unit prices in the Schedule of Prices which have been changed but not initialed and the Contract totals are inconsistent with the price as changed;	Automatic rejection.
(d)	Unit price extension which is not consistent with the unit price.	The Agent will update the extended price based on the stated unit price. (No change shall be made to the stated unit price.) The Bidder shall be provided four (4) business days to initial the changes as made by the Agent.
15	Other mathematical errors which are not consistent with unit prices or where an error has been made transferring an amount from one part of the submission to another	The Agent shall correct the error(s) or update with the amount shown before transfer, and shall update the ensuing totals accordingly. The Bidder shall have four (4) business days to initial corrections as made by the Agent

Schedule "A"
to By-law 2018-187

Schedule "B" – Applicable to Hard Copy and Electronic Bidding

By-law 2014-1 of the City of Greater Sudbury

Page 4 of 4

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.