

NO: R099

COUNCIL DATE: May 30, 2011

REGULAR COUNCIL

TO: Mayor & Council

DATE: May 24, 2011

FROM: General Manager, Finance & Technology

FILE: 3900-01

SUBJECT: Amendments to the Purchase and Expenditure Authorization By-law

RECOMMENDATION

The Finance & Technology Department recommends that Council:

1. Receive this report as information; and
2. Authorize the City Clerk to bring forward for the required readings an amendment by-law that would have the effect of incorporating into the Purchase and Expenditure Authorization By-law, 2007, No. 16535, as amended, the amendments described in this report and shown in Appendix I.

INTENT

The purpose of this report is to obtain Council approval to amend the Purchase and Expenditure Authorization By-law, 2007, No. 16535, as amended (the "Purchasing By-law"), specifically Section 6.2 which speaks to legal action exemptions.

DISCUSSION

Section 6.2 of the Purchasing By-law states that the City, at its discretion, may reject any Quotation, Tender or Proposal submitted by a person or entity that has engaged in legal action against the City, its elected officials, officers or employees. This section is currently silent on situations where the City has initiated legal action against an individual or legal entity, including legal action related to non-compliance with City by-laws.

It is proposed that language be added to Section 6.2 that would stipulate that the City may, at its discretion, reject any Quotation, Tender or Proposal if the City has initiated legal action against "the person or any of its officers or directors". It is also proposed that an additional subsection be added to Section 6.2 to stipulate that the City's discretion may only be exercised where "the legal action relates to the person's inability or failure to comply with City by-laws and those by-laws may be applicable to the subject matter of the contract."

The attached Appendix I highlights the changes that are proposed to Section 6.2.

Legal Services has reviewed this report and the proposed changes to Section 6.2 and has no concerns.

CONCLUSION

It is recommended that Council authorize the City Clerk to bring forward for the required readings an amendment by-law that would have the effect of incorporating into the Purchase and Expenditure Authorization By-law, 2007, No. 16535, as amended, the amendments described in this report and shown in Appendix I.

Vivienne Wilke, CGA
General Manager,
Finance & Technology

Appendix 1: Section 6.2 of the Purchase and Expenditure Authorization By-law

Appendix 1

Section 6.2 of the Purchase and Expenditure Authorization By-law, 2007, No. 16535, as amended

6.2 Legal Action Exemption

The City may, in its absolute discretion, reject a Quotation, Tender or Proposal submitted by a person pursuant to Sections 6.4 or 9.2 of this By-law if the person, or any of its officers or directors, is or has, either directly or indirectly through another corporation or entity, been engaged in legal action against the City, its elected officials, Officers or Employees, or if the City has initiated legal action against the person or any of its officers or directors, in relation to:

- (a) any other contract for Goods or Services; or
- (b) any matter arising from the City's exercise of its powers, duties, or functions under the *Local Government Act*, *Community Charter* or another enactment,

within five years of the date of the request or invitation. In determining whether to reject a Quotation, Tender or Proposal under this Section 6.2, the City will consider whether:

- (c) the legal action has the potential to affect the person's ability to work with the City, its consultants or representatives;
- (d) the legal action relates to the person's inability or failure to comply with City by-laws, and those by-laws may be applicable to the subject matter of the contract;
- (e) the City's experience with the person indicates that the City is likely to incur increased staff and legal costs in the administration of the contract if it is awarded to the person; and,
- (f) the legal action has or may give the person access to information related to a similar Quotation, Tender or Proposal which is not available to others.