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| TO: | CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING ON APRIL 29, 2014 |
| FROM: | MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER |
| SUBJECT: | APPEAL UNDER SECTION 2.9 OF THE PROCUREMENT OF GOODS AND SERVICES POLICY |

RECOMMENDATION

That, on the recommendation of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, the appeal under Section 2.9 of the Procurement of Goods and Services Policy by Bre-Ex **BE DENIED**.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

None.

BACKGROUND

There is a dispute mechanism in the Procurement of Goods and Services Policy, Section 2.9, which allows for proponents to appeal to the Committee, which is the authorizing body, prior to Council final approval should they feel that there has been an injustice. Section 2.9 reads as follows:

“2.9 The City recognizes that mistakes and misunderstandings may occur; bidders may feel aggrieved and may seek to dispute the recommendation of an award of a contract. To maintain the integrity of the process, bidders who believe they have been treated unfairly can make this known by contacting the Manager of Purchasing and Supply prior to the award of the contract. Disputes shall be resolved as follows:

- a. A meeting between the bidder and the Manager of Purchasing and Supply;
- b. If (a) does not lead to a resolution between the bidder and the City, the bidder may appeal the decision to the City Treasurer;
- c. If (b) does not lead to a resolution between the bidder and the City, the bidder may appeal the decision to the Committee. Committee’s decision and City Council’s approval is final.”

There has only been one appeal to the Committee during this term of Council and it was denied. Generally, proponents may not agree with the decision made but understand the rationale for the decision upon review with either the Manager of Purchasing and Supply or the City Treasurer. It is rare for a supplier to dispute something as critical as failure to submit the correct Form of Tender.

Request for Tender 14-08: 2014 Infrastructure Lifecycle Renewal Program Contract #1, Simcoe Street and Henry Street, closed February 19, 2014. The final recommendation should have gone to the April 7, 2014 Civic Works Committee meeting. The form of Tender submitted by Bre-Ex for this bid was for Tender 14-04: 2014 Infrastructure Lifecycle Renewal Program – Contract #7.

The bid was rejected by the City of London on March 21, 2014 based on:

- 1) Section 9(b) of the Information to Tenderers states that “the Tenderer shall submit the Form of Tender issued by the Contract Administrator”. In this case, Bre-Ex incorrectly submitted the Form of Tender (FT-1, FT-2) from T14-04.
- 2) Section 9(g) of the Information to Tenderers states that “the Tenderer shall not apply any conditions whatsoever to the Total Contract Price”. The Form of Tender submitted by Bre-Ex identifies a project completion date of October 31, 2014 which is inconsistent with the official contract of 110 working days.

The supplier’s representative, Chris Brekelmans, appealed immediately upon receipt of the attached letter (Appendix “A”) and met with John Freeman, Manager of Purchasing and Supply, on March 31, 2014 as per Section 2.9 (a) of the Procurement of Goods and Services Policy. He was not satisfied with the City position and subsequently met with John Freeman and Mike Turner, Deputy City Treasurer, on April 1, 2014 as per Section 2.9 (b) of the Procurement of Goods and Services Policy. Curtis Brekelmans was also present at this second meeting. Bre-Ex is still not satisfied that their bid should be rejected and has forwarded a separate document appealing the rejection to the Committee for their review.

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| PREPARED AND SUBMITTED BY: | CONCURRED BY: |
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| JOHN FREEMAN MANAGER, PURCHASING AND SUPPLY | MIKE TURNER DEPUTY CITY TREASURER |
| RECOMMENDED BY: | |
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| MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER | |

Attachment