SUBJECT: Participation of Elected Officials in Evaluating Bid Submissions (FCS06072) (City Wide) Corporate Administration Committee: Outstanding Business Item L

RECOMMENDATION:

a) That Finance and Corporate Services report FCS06072 be received, and

b) That Item L be removed from the Outstanding Business List of the Corporate Administration Committee.

EXECUTIVE SUMMARY:

Council requested that Purchasing review the viability of, or conflicts with respect to, the involvement of elected officials in the evaluation process of Request for Proposals. This review has included a survey of Ontario municipalities as well as the related discussions contained in the City of Toronto Computer Leasing (MFP) Inquiry & Toronto External Contracts Inquiry authored by The Honourable Madam Justice Denise E. Bellamy, Commissioner (The Bellamy Report). With the exception of one municipality, the findings have been that elected officials either do not, or are discouraged from participating in the evaluation of Request for Proposals submissions.
BACKGROUND:

In the fall of 2005, Council requested that staff conduct a review on the viability or potential conflicts associated with elected officials participating in the evaluation of the bid submissions received in response to a Request for Proposals. This report is based on the related findings contained in The Bellamy Report and on the results of a survey of Ontario municipalities.

ANALYSIS/RATIONALE:

This report relies heavily on the results contained in The Bellamy Report as it directly addresses the role of elected officials in the evaluation of bids. As well, a discussion was held at an Ontario Public Buyers Association (OPBA) Manager’s Meeting in May 2006 regarding this topic and a summary of this discussion is included in this report.

Of approximately 15 municipalities present at this OPBA meeting, all but two municipalities did not permit elected officials to participate in the evaluation of submissions. Only one of these two municipalities, namely the City of Cambridge, expressly permitted this practice. In the City of Vaughan, Elected Officials have participated, to a limited extent, but under narrowly defined circumstances usually very large and complex projects.

Currently, Committee and Council have an opportunity to address Vendors’ concerns via the Purchasing Policy, Section 4.18 Policy for Vendor Complaint Resolution. If the bidder and the Manager of Purchasing are unable to achieve a satisfactory resolution, and the Manager of Purchasing is confident that the process was fair and equitable, the bidder may make a formal written request to appear before the Corporate Administration Committee who will provide a recommendation for Council’s Approval.

This issue is also addressed in the Procurement Chapter contained in Volume 1 of The Bellamy Report - Common Risk Areas, Chapter 7: Role of Elected Officials. This chapter is included in its entirety as Appendix ‘A’ to this report. The Chapter opens with the following passage, "Experts suggest that in best practices jurisdictions – U.S. and Canada, federal, provincial/state, and municipal – elected officials understand the importance of remaining outside of the competitive tendering process. In this regard, it is generally viewed that one of the benefits of having a highly professionalized procurement function is the ability to insulate and protect politicians from allegation of attempting to influence procurement decisions."

There were 239 recommendations made as a result of the Toronto Computer Leasing Inquiry & Toronto External Contracts Inquiry. Of these 239 recommendations, 111 were related to procurement, and more specifically four recommendations appeared under the heading of Councillors. These four recommendations are as follows:

♦ “City Council should establish fair, transparent, and objective procurement processes. These processes should be structured so that they are and clearly appear to be completely free from political influence or interference."
“Councillors should separate themselves from the procurement process. They should have no involvement whatsoever in specific procurements. They have the strongest ethical obligation to refrain from seeking to be involved in any way.”
“Members of Council should not see any documents or receive any information related to a particular procurement while the procurement process is ongoing.”
“Councillors who receive inquiries from vendors related to any specific procurement should tell them to communicate with one or more of the following three people as appropriate in the circumstances:
   a. The contact person in the tender document, in accordance with the contract rules in place
   b. The fairness commissioner
   c. The person in charge of the complaints process, as set out in the tender documents”

In June of 2005, the City of Toronto presented a report to Council regarding a Policy for Access to Information to Members of Council at Various Stages of the Procurement Process. The position taken by staff in the Toronto report is also consistent with the findings of the Bellamy Report and was summarized as follows:

“It is the role of Council to set the procurement policies for the City and to set out the monitoring process that ensures that the policies are followed by processional staff.”
“The monitoring of the City’s procurement policies and the oversight of an individual procurement should be carried out by Committee or Council as a whole as opposed to individual Councillors.”
“Individual Councillor Involvement in the specific steps of the procurement process is to be discouraged because the integrity of the process can be compromised by allegations of inappropriate political influence or interference in procurement decisions. Separating the roles and responsibilities of administrative staff from those of the elected officials can protect the City from such allegations.”

Again, the position taken by the City of Toronto is consistent with the majority of municipalities surveyed through the OPBA.

Another factor that should be considered is that the tendering and evaluation process could span the end of an election term. There is the risk that an Elected Official, who is participating in the evaluation of a Request for Proposals, may choose not to pursue another term in office or may not be re-elected should they choose to re-run. This would result in having to replace the Elected Official on the evaluation team and there would be no continuity.

Recently a Request for Pre-qualifications and subsequent Request for Proposals were issued for the Management and Operation of the City Golf Courses and Winter Sports Park. At the beginning of the procurement process, four Councillors were appointed to the evaluation team. During the course of the process, three of the four members had to withdraw from participating in the evaluation due to conflicts of interest that existed because they had been appointed as City of Hamilton representatives on the Board of the Hamilton Conservation Authority (H.C.A.) H.C.A. were one of the proponents
submitting a pre-qualification package. This incident illustrates how conflicts of interest may arise for elected officials who participate in the evaluation of Request for Proposals.

City Council has approved a vendor complaint resolution policy and procedures which allow vendors with complaints regarding the procurement process to be heard. The final step in this process is to appear as a delegation at the Corporate Administration Committee (CAC) to outline the concerns and seek redress. The recommendation of CAC then goes to Council for approval. If members of Council participate in the bid evaluation and award process, then vendors may have concerns about Committee’s and Council’s ability to be impartial in hearing their concerns.

**ALTERNATIVES FOR CONSIDERATION:**

There are several options that could be considered as follows:

- Council could direct staff to draft a policy that would prohibit the participation of Elected Officials in the evaluation of Requests for Proposals.

- Council could direct staff to draft a policy that would allow participation of Elected Officials in the evaluation of Requests for Proposals in narrowly defined circumstances.

- Council could choose to take no action regarding development of a policy regarding participation of Elected Officials in the evaluation of Requests for Proposals, and thus, continue to address participation of Elected Officials in the evaluation of Requests for Proposals on a one off basis as new Requests for Proposals come forward.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Development and approval of a policy governing involvement of Elected Officials in the evaluation of Requests for Proposals would minimize the legal and financial risks to the City from vendor claims of conflict of interest.

There are no staffing implications as a result of this report.

**POLICIES AFFECTING PROPOSAL:**

Purchasing Policy Section 4.5.5 outlines the Policy for Request for Proposals ($100,000 or greater).

**RELEVANT CONSULTATION:**
Discussions regarding participation of elected officials in evaluations of proposals were held with Legal Services. As well, a survey of Ontario municipalities was conducted to compare their purchasing practices regarding this process.

**CITY STRATEGIC COMMITMENT:**

By evaluating the “**Triple Bottom Line**”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Evaluate the implications of your recommendations by indicating and completing the sections below. Consider both short-term and long-term implications.

**Community Well-Being is enhanced.** ☑ Yes ☐ No
Since members of Council participate in the Vendor Dispute Resolution process in determining whether an evaluation and award process was fair, open and transparent, the vendor community would feel that Committee’s decision on the dispute was unbiased if elected officials were not involved in the evaluation of submissions for Request for Proposals.

**Environmental Well-Being is enhanced.** ☐ Yes ☑ No

**Economic Well-Being is enhanced.** ☐ Yes ☑ No

**Does the option you are recommending create value across all three bottom lines?** ☐ Yes ☑ No

**Do the options you are recommending make Hamilton a City of choice for high performance public servants?** ☐ Yes ☑ No
7. Role of Elected Officials

Experts suggest that one of the important benefits of having a highly professionalized procurement function is the ability to insulate and protect politicians from allegations of attempting to influence procurement decisions. In discussing the role of politicians, most experts emphasize the up-front role of elected officials to:

- Approve procurement policies, including identifying which types of projects require their express approval.
- Ensure that a professional purchasing infrastructure exists.
- Pre-approve the organization’s purchasing requirements as part of the overall budget process.
- Approve any purchasing needs that exceed authorized budgets before any formal purchasing activity is initiated.

To the extent that problems with political involvement in the procurement process arise, they tend to be either during or at the back-end of the process, e.g. at the contract award stage or in the handling of debriefings and/or complaints. According to some experts, politicians do not always support fair and open competition, particularly when their constituents are involved.
As discussed in the section on Single Point of Contact, the best practice approach is to establish the expectation that vendors and their lobbyists/agents will only communicate with the designated procurement official. At more senior levels of government (i.e. provinces, federal government), this prohibition would typically be in place until the contract award announcement has been made. At the municipal level, the practice is not as consistent.

Whether and to what extent an individual municipality will adopt a policy response to the problem depends to a large extent on the culture or personality of individual Councils. In some jurisdictions, direct lobbying of elected officials at all stages during and after the competitive processes is viewed as a legitimate and acceptable part of the process. In other jurisdictions, no policy is in place to prohibit this kind of activity because there is general agreement among elected officials that this is not acceptable behaviour. Still other jurisdictions have established a more formal single point of contact policy that applies to both administrative staff and Councillors. In some cases, a single point of contact policy is in place until an award recommendation is made public. In other cases, the single point of contact prohibition is in place until an award has actually been made and announced.

Experts suggest that in reviewing staff award recommendations, politicians who understand their role and the importance of fairness and equity would tend to focus on quality assurance, i.e. whether the approved process was followed and used appropriately. Where this kind of understanding does not exist, the political level can often become overly and in the view of many experts, inappropriately involved in the details of the award.